No. 982
LIBRARY
SUPREME COURT, U. S.

Office - Supreme Court, U.S.
FILED
MAY 6 1958
JOHN T. FEY, Clerk

RECORD

United States Court of Appeals
FOR THE EIGHTH CIRCUIT.

No. 15,833.

CIVIL.

FRED W. STOVER,
Appellant,

vs.

FARMERS' EDUCATIONAL AND COOPERATIVE UNION OF AMERICA, a Corporation,
Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA.

United States Court of Appeals

FOR THE EIGHTH CIRCUIT.

No. 15,833.

CIVIL.

FRED W. STOVER,
Appellant,

vs.

FARMERS' EDUCATIONAL AND COOPERATIVE UNION OF AMERICA, a Corporation,
Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA.

INDEX

Abstract of Pleadings, Evidence and Proceedings	1
Plaintiff's Application for Citation for Contempt of Court	1
Amendment to Application for Citation	4
Order Granting Application to Show Cause	5
Answer to Application for Citation for Contempt of Fred W. Stover	5
Exhibit "A", Affidavit of Fred W. Stover	9
The Evidence	12
Plaintiff's Evidence	21
Maurice O'Reilly—	
Direct Examination	21
Cross Examination	30
Re-Direct Examination	32
Defendant's Evidence	34
Fred W. Stover—	
Direct Examination	37
Further Direct Examination	43

Cross Examination 53
Re-Direct Examination 55

Mrs. Edna Untiedt—

Direct Examination 57

Memorandum Opinion on Question of Contempt and Citation Against Fred W. Stover 61
Findings of Fact, Conclusions of Law, Judgment and Decree 64
Memorandum Opinion on Objections to Findings of Fact, Conclusions of Law, and Judgment 70
Order Overruling Objection to Findings of Fact, Conclusions of Law and Judgment 71
Notice of Appeal 72
Supersedeas Bond 72
Order Granting Supersedeas and Approving Bond 73
Designation of Record upon Appeal 74
The Exhibits 75
List of Exhibits which are not set out in Record, but which will be transmitted to the Clerk 75

Plaintiffs'

1. Printed record upon original trial of injunction suit
2. U. S. Farm Union News (May-June issue—a newspaper)
3. U. S. Farm Union News (a newspaper)
4. U. S. Farm Union News (a newspaper)
5. U. S. Farm Union News (a newspaper)
6. Photograph showing sign reading "Iowa Farmers Union at 517 Keo Way
7. Stationery letterhead Iowa Farmers Union
8. Stationery letterhead Iowa Farmers Union
9. Circular

Defendants'

A Memorandum for Trial Brief accompanying filing of original complaint
B Copy plaintiffs' brief and argument filed with Judge Harper
C April, 1955, issue of Iowa Union Farmer (a newspaper)
E Letterhead of National Farmers Union
F Issue of National Union Farmer (a newspaper)
G Issue of National Union Farmer (a newspaper)
H Paper containing dictionary definition of words "trade mark" and "trade name"

List of Relevant Docket Entries Pertinent to This Appeal 76

ABSTRACT OF PLEADINGS, EVIDENCE AND PROCEEDINGS.

(Plaintiff's Application for Citation for Contempt of Court.)

(Filed in United States District Court on September 10, 1956.)

Comes now the Farmers' Educational and Cooperative Union of America, plaintiff in the above entitled cause, and makes application for citation for contempt of Court of Fred W. Stover for willful violation of the injunction issued as a part of the final decree in this cause entered herein on or about June 13, 1956, and in support thereof shows to the Court the following matters, to-wit:

1. On or about June 13, 1956, the Court filed herein its Findings of Fact, Conclusions of Law, and Order for Judgment, pursuant to which judgment was simultaneously entered in favor of the plaintiff, Farmers' Educational and Cooperative Union of America, and against the defendants, wherein said defendants, including the defendant, Fred W. Stover, were permanently enjoined from making any use whatever, directly or indirectly, of plaintiff's collective mark, "Union Farmer", in connection with the printing, publication and distribution of any newspaper or like periodical, and from making any use whatever, either directly or indirectly, of plaintiff's service marks to-wit: the words, "Farmers Union", and the symbol, consisting of a plow, a rake and a hoe surrounded by a circle, in connection with the dissemination of information pertaining to farming and related industries, and particularly information in connection with cooperatives to aid the farmer in marketing his produce, information relating to educational and entertainment programs for farmers and their families, information as to proposed legislation that directly or indirectly may affect those engaged in farming and related industries, and services to and for the farmer relating to storage of produce, the making of mortgage loans, the brokerage of produce and livestock, the sale of insurance, and the serv-

icing of farm equipment, and from in any way, directly or indirectly, attempting to compete with the plaintiff in its use of said trade-marks.

2. On or about July 11, 1956, the defendants, including the defendant, Fred W. Stover, filed in this cause a notice of appeal to the United States Court of Appeals for the Eighth Circuit, but no application was made for any stay of the operation of the injunction and, notwithstanding said appeal, said injunction remains and still is in full force and effect.

3. Subsequent to the entry of decree in this cause, the defendant and appellant, Fred W. Stover, in his capacity as President of the Iowa Union Farmer Association, one of the defendants herein, supervised the publication and distribution of a newspaper entitled U. S. Farm Union News (formerly Iowa Union Farmer), wherein he solicited contributions for the Iowa Union Farmer Association, 517 Keo Way, Des Moines 9, Iowa, and published various articles therein which demonstrated a willful and deliberate defiance of the decree of this Court and a contumacious attitude toward this Court. In speaking of the trial of this cause, one article states as follows:

> "Judge Roy Harper of Missouri, a Truman appointee and a friend of Charlie Brannan was assigned to hear the case. We knew nothing about the case before—about the pre-trial conference and the discussions that had been held before Judge Riley. It seems that he paid no attention to our answer, our briefs and arguments or testimony. His excuses seemed to be that we had conceded the legality of the charter revocation, and therefore all the long record of N. F. U. interference in I. F. U. affairs had no bearing."

The use of the name U. S. Farm Union News (formerly Iowa Union Farmer) of said publication is in direct violation and defiance of the injunction issued herein as aforesaid. The solicitation of funds for the Iowa Union Farmer Association is in direct violation and defiance of the decree herein. The various statements contained in the publication of said U. S. Farm Union News clearly demonstrate

that the defendant, Fred W. Stover, has no intention of complying with the decree entered herein and is deliberately acting in contempt thereof. The headquarters of the defendant, Iowa Farmers Union, which is likewise the headquarters of the Iowa Union Farmer Association, at 517 Keo Way, Des Moines, Iowa, displays a large sign, Iowa Farmers Union, in direct violation of the decree herein. The defendant, Fred W. Stover, has continued to use stationery with the name, Iowa Farmers Union, thereon, since the entry of the decree herein. He has conducted a campaign for the solicitation of members of the Iowa Farmers Union under representation that in a short space of time it will be reinstated as the Iowa Division of the plaintiff herein and the general tenor of the remarks contained in the U. S. Farm Union News demonstrates a deliberate and willful contumacious attitude to ignore the injunction issued herein and to combat the efforts of the plaintiff to reestablish its Iowa Division, the charter for which was revoked in 1954, and which revocation was conceded of record in this cause at the trial herein. In addition to the foregoing, the defendant, Fred W. Stover, is attempting to collect funds which are the property of the Iowa Division of the plaintiff and do not belong to the said Fred W. Stover or any of the defendants in this cause, all in violation of the injunction contained in the decree entered of record in this cause.

Wherefore, the Farmers' Educational and Cooperative Union of America, plaintiff herein, prays that this Court issue a citation directed to the United States Marshal, Southern District of Iowa, commanding him to attach the person of Fred W. Stover forthwith and bring him before this Court at such time as the Court may fix to show cause why he should not be held in contempt of this Court and punished therefor and that plaintiff have such other and further relief as may be just and equitable in the premises.

Signed and verified by counsel.

(Amendment to Application for Citation.)

(Filed in United States District Court on December 10, 1956.)

Comes Now the Farmers' Educational and Cooperative Union of America, plaintiff in the above entitled cause, and hereby amends its Application for Citation for Contempt of Court of Fred W. Stover previously filed herein by adding thereto Paragraphs 4 and 5 as follows:

4. That the publication and distribution of a newspaper entitled U. S. Farm Union News (formerly Iowa Union Farmer), referred to in Paragraph 3 hereof, was denominated the May-June 1956 issue of said newspaper. That thereafter and subsequent to the entry of decree in this cause, the defendant and appellant, Fred W. Stover, in his capacity as president of the Iowa Union Farmer Association, one of the defendants herein, supervised the publication and distribution of a further and subsequent issue of said newspaper referred to in Paragraph 3 hereof, which was denominated the July-August 1956 issue of said U. S. Farm Union News, by which newspaper defendant, Fred W. Stover, solicited contributions for the Iowa Union Farmer Association, published various articles which demonstrated a willful and deliberate defiance of the decree of this court and a contumacious attitude toward this court. The use of the name U. S. Farm Union News (formerly Iowa Union Farmer) of said publication is in direct violation and defiance of the injunction issued herein as aforesaid. The solicitation of funds for the Iowa Union Farmer Association is in direct violation and defiance of the decree herein. The various statements contained in said publications of said U. S. Farm Union News clearly demonstrates that the defendant, Fred W. Stover, has no intention of complying with the decree entered herein and is deliberately acting in contempt thereof.

5. All of said acts of Fred W. Stover as set forth in Paragraphs 3 and 4 of this application are in violation of said injunction and decree and are all to the damage of plaintiff.

Wherefore, plaintiff prays as in its original application herein.

Signed and verified by counsel.

(Order Granting Application to Show Cause.)

(Filed in United States District Court on December 10, 1956.)

Upon the reading and filing of the verified application of Farmers' Educational and Cooperative Union of America, a corporation, plaintiff in the above entitled cause, charging the defendant Fred W. Stover to be in contempt of the injunction order of this Court hereinbefore made, it is

Ordered that a rule be and it is hereby issued on the defendant Fred W. Stover to appear before this Court on the 28th day of January, 1947, at 10 o'clock A. M., to show cause why he should be attached for and committed for contempt for violation of the injunction heretofore ordered and issued in this cause, to-wit, on June 13, 1956, and also why he should not be assessed a compensatory fine payable to the plaintiff herein, together with such other penalty as may seem to the Honorable Court consistent with equity and good conscience.

It Is Further Ordered that a copy of said verified application and of this Order be served upon said Fred W. Stover personally on or before the 18th day of January, 1957.

s/ Albert L. Reeves,
Judge.

(Answer to Application for Citation for Contempt of Court of Fred W. Stover.)

(Filed in United States District Court on January 28, 1957.)

Comes now the defendant, Fred W. Stover, and for answer to the Application for Citation for Contempt of Court respectfully states and shows to the Court the following matters and things:

1. This defendant admits that a Decree was made and entered of record in this cause on or about June 13, 1950, enjoining the defendants from using certain registered trade marks which were the property of plaintiff as is shown by the Decree on file in this Court in this case, and as alleged in Paragraph 1 of the Application, but he denies that he has attempted to compete with plaintiff in the use of the trade marks.

2. This answering defendant admits the allegations set forth in Paragraph 2 of the Application.

3. For answer to Paragraph 3 in the Application, this defendant admits that subsequent to the entry of the Decree in the above entitled cause, he supervised the publication and distribution of a newspaper entitled "U. S. Farm Union News", but he denies that he published therein various articles which demonstrated a willful and deliberate defiance of the Decree of this Court and a contumacious attitude towards this Court.

The defendant denies that the use of the name "U. S. Farm Union News" of said publication is in direct violation and defiance of the Injunction issued in this cause.

The defendant denies that the solicitation of funds for the Iowa Union Farmer Association is in direct violation and defiance of the Decree herein, and denies that the allegation with reference thereto has any relevancy or materiality in or to this proceeding.

Defendant denies that the statements contained in said "U. S. Farm Union News" demonstrate that he has no intention of complying with the Decree entered herein and is deliberately acting in contempt thereof.

Defendant admits that the headquarters of the defendants, Iowa Farmers Union and Iowa Union Farmer Association, is at 517 Keo Way, Des Moines, Iowa, where a large sign is displayed containing the name of the corporation, Iowa Farmers Union which is the trade name of said defendant and denies that the sign or the use of said name is in violation of the Decree herein.

The defendant, Iowa Farmers Union uses stationery with its trade name thereon as it has a right to do as it is not and

has not been enjoined from the use of its trade name, Iowa Farmers Union.

The defendant admits that he has conducted a campaign for the solicitation of members of the Iowa Farmers Union, an Iowa Corporation, but denies that he has done so under representation that in a short space of time it will be reinstated as the Iowa Division of plaintiff.

This defendant expressly denies the conclusion contained in Paragraph 3 of the Application to the effect that the general tenor of the remarks contained in the U. S. Farm Union News demonstrates a deliberate and willful contumacious attitude to ignore the Injunction issued herein and to combat plaintiff's efforts to reestablish its Iowa Division and alleges that the statements last referred to are merely conclusions and opinions of the pleader unsupported by any factual basis.

With respect to the last sentence set forth in the third paragraph of the Application, this defendant denies that the subject matter thereof constituted a violation of the Decree in this cause and alleges that that matter was not litigated in this cause and is an attempt to introduce into this case at this time, a collateral issue having no bearing upon the proceeding before the Court and no relevancy or materiality to the contempt charge.

4. Except as hereinbefore specifically admitted or otherwise qualified or explained, the defendant denies the allegations contained in Paragraphs 1, 2 and 3 of the original Application for Contempt filed herein.

5. This defendant, for further answer to the Application herein, expressly denies that he has at any time had or entertained any intention to violate or disobey the terms of the Decree herein, on the contrary, he has caused the name of the Iowa Union Farmer to be changed to U. S. Farm Union News for the purpose of avoiding any confusion of the identity of the defendants with plaintiff or its publication, and to avoid a situation where anyone could charge or accuse defendants were acting in defiance of the Decree or in contempt of this Court.

6. The defendant further alleges that while the original complaint filed in this Court by plaintiff involved a trade

name, upon the trial of the case the plaintiff apparently abandoned any effort or attempt to pursue its cause of action on account of the trade name and the only issue before the Court upon the trial of this case were three (3) trade marks, as is shown by the findings and the Decree. The defendants, Iowa Farmers Union and Iowa Union Farmer Association, are Iowa Corporations and there is no Decree enjoining the defendant corporations from using their trade names and incorporated names and doing business as such. The defendant denies that he has used any of the plaintiff's registered trade marks since June 13, 1956 at any time or place or for any purpose.

7. For answer to Paragraph 4 in the Amendment to Application for Citation for Contempt filed herein, this defendant alleges that he did publish and distribute a newspaper entitled U. S. Farm Union News designated as the May-June, 1956 issue of said paper as well as the July-August issue thereof, but denies that the question as to whether or not he solicited contributions therein for the Iowa Union Farmer Association is relevant to this proceeding or constituted a violation of the Decree herein, and he expressly denies that he published therein articles which demonstrated willful and deliberate defiance of the Decree of this Court and a contumacious attitude toward this Court.

The defendant denies that the use of the name U. S. Farm Union News is in direct violation and defiance of the Injunction issued in this case; that the solicitation of funds for Iowa Union Farmer Association is in direct violation and defiance of the Decree herein; and that the various statements contained in said publication, U. S. Farm Union News clearly demonstrate that the defendant, Fred W. Stover, has no intention of complying with the Decree entered herein and is deliberately acting in contempt thereof. This defendant disclaims any intention of disobeying or defying the Decree of this Court and affirmatively states that he has been acting in what he did upon the advice of legal counsel in whom he had confidence and that said counsel told him that he was not enjoined from using the trade names, Iowa Farmers Union and Iowa Union Farmer Association as they were not trade marks, but trade names

which had been used by said defendant prior to the re-entry into Iowa of plaintiff. That said change of name was made upon the recommendation of defendants' counsel, George Cosson, following a pre-trial conference in this case before Judge William F. Riley, and in an effort to dispose of the litigation.

8. This defendant further denies that the allegations contained in Paragraph 5 of the Amendment to the Application and expressly denies that plaintiff has suffered or sustained any damage by reason of any acts or conduct of this defendant, Fred W. Stover.

9. In support of this defendant's foregoing answer, there is attached hereto, marked Exhibit "A" and by reference incorporated herein and made a part hereof, the Affidavit of the defendant, Fred W. Stover, which is offered in support of this answer.

Wherefore, this defendant, having disclaimed any intent to violate or disobey the Decree of the Court herein, and having fully answered and attempted to purge himself of the charge of contempt, respectfully prays that this Court make an order dismissing the plaintiff's Contempt Application, as amended, and finding this defendant innocent of the charges made in plaintiff's said Application.

EXHIBIT "A"

AFFIDAVIT OF FRED W. STOVER.

STATE OF IOWA)
) ss
COUNTY OF POLK)

I, Fred W. Stover, being first duly sworn, on oath depose and state that I have read the Amended Application for Citation for Contempt and this Affidavit is attached to my answer thereto and offered in support thereof.

After the commencement of this suit, I was informed by one of my counsel, George Cosson, that at a pre-trial conference held in the U. S. District Courthouse in Des Moines, Iowa, before Judge William F. Riley, that Judge Riley had expressed the view that if we changed the name

of the defendant, Farmers Educational and Cooperative Union of America, Iowa Division, to Iowa Farmers Union by appropriate proceedings to accomplish an amendment to our Articles of Incorporation and that we would not at anytime claim that we were affiliated with the national organization nor in any way claim to represent or speak for the national organization, that the case would thereupon become a moot case and that would dispose of the litigation.

After that conference with Attorney George Cosson, I caused the change of name to Iowa Farmers Union, acting upon the advice of Mr. Cosson and pursuant to the conversations related above.

The original complaint filed herein made repeated references to the use of the term or expression "trade names" and likewise, that term was repeatedly used in the Memorandum Brief filed by plaintiff at the time of the filing of the complaint. However, upon the trial, apparently, the plaintiff abandoned any claim to enjoin the use of a trade name or names and Judge Roy Harper, the Judge before whom the case was tried, at the trial and in his findings expressed the view that the case just involved three (3) registered trade marks as appears from the first paragraph of the Memorandum Opinion filed by Judge Roy Harper, May 26, 1956, and the Court is asked to take judicial notice of the language contained therein. We conceded at the trial that plaintiff was entitled to the exclusive use of its symbol and trade mark consisting of the plow, the rake and the hoe, surrounded by a circle.

After the Decree was entered in this case, I consulted with J. R. McManus, an attorney of Des Moines, Iowa, whom I knew had experience in "trade name litigation" in the Federal Courts, and he advised me, after examining the records and files in this case, that the defendants were not enjoined from using the trade names, Iowa Farmers Union and Iowa Union Farmer Association, under which said corporations were licensed to do business by the Secretary of State of the State of Iowa and that we could continue to use said trade names.

I believed and relied and acted upon the statements made to me by my counsel, George Cosson and J. R. McManus as said above.

I am now and always have been a farmer. I am fifty-eight (58) years old. I have never been charged or accused before in my life with contempt of Court or of acting in violation of any Decree or Order of the Court. I never at any time intended to defy or disobey the Order of the Court entered June 13, 1956 in this cause and have studiously attempted to avoid doing so pending our appeal to the U. S. Court of Appeals for the Eighth Circuit.

That after the Decree was filed, our Boards of Directors met and discussed the Decree and its terms. We decided to change the name of our newspaper publication from Iowa Union Farmer to U. S. Farm Union News so that nobody could accuse us of violating the terms of the Decree or conduct constituting a contempt of Court or confuse the identity of our paper with plaintiff's papers. The Board of the Iowa Union Farmer Association authorized the change of name of the newspaper published by it for the purposes stated. Furthermore, the paper being a farm paper distributed among farm families, we did want to preserve the identity of it sufficiently so as to indicate by its name that its circulation was designed and intended primarily for farmers. Furthermore, we wished to extend and broaden our coverage beyond the boundaries of Iowa and for that reason also, adopted the name U. S. Farm Union News as is stated in the May-June issue of our publication on the first page thereof.

The only purpose that we had in placing the words (formerly Iowa Union Farmer) below the name U. S. Farm Union News in our initial issue of the paper under the new name was to indicate to our subscribers the change of name, but the continuance of the same editorial policies and so as to let the subscribers know that the one replaced the other newspaper with merely a change in name, as the subscribers had paid for the publication under the name Iowa Union Farmer.

We were using the name Iowa Farmers Union in Iowa following the amendment to our articles in September, 1955, and we were using the name Iowa Union Farmer Association since 1952.

In the print in our publication we have attempted to avoid the use of type or print similar to the type or print or style

or lettering used by plaintiff in its registered trade marks. The plaintiff's registered trade marks are in a distinctive style or type or lettering. We have in no way imitated or followed such style or type or lettering for the purpose of attempting to avoid confusion of identity. Furthermore, our publication goes almost exclusively to farmers who have already been advised by the press of the State of Iowa and our own publication that there is no affiliation existing or claimed between the defendant corporations and the plaintiff, so that there is no likelihood that the recipients and the advertisers of our paper would be mislead as to the identity of our publication and the plaintiff's.

The same type of information has also been widely disseminated by and through the medium of broadcasting stations in Iowa and elsewhere which would reach all subscribers and publishers to which our publication has been sent since June 13, 1956.

Signed and sworn to with jurat attached.

(The Evidence.)

Mr. Miller: This case, your honor, was tried in February of this year. Mr. McManus and I assume that your honor will take judicial notice of the record made at the time that case was tried and upon which Judge Harper's findings of fact and conclusions of law and decree are based. Because of the fact that the case has been appealed, as admitted in the pleadings, and the printed record has been filed by the appellant, I would like to have identified a copy of the printed record which would give your honor an opportunity to find out what the record is without having to go through a very bulky file.

The Court: I don't know whether I can take judicial notice of the printed record, but I would have all the records of the court—

Mr. McManus: I have no objection, your honor, and I think that what you have suggested is correct, and that was really the matter that Judge Miller and I discussed, that you would take judicial notice of the records of this court.

But I haven't any objection to your honor receiving in evidence as part of their proof the printed record in the Circuit Court, which contains most of the pertinent matter pertaining to the trial below.

The Court: In other words, the record here is offered in lieu of the judicial notice that I take of the records of the court because that is a transcript of the record?

Mr. McManus: That would be agreeable. It isn't a transcript, your honor, but it contains a transcript of the proceedings and an abstract of the testimony.

Mr. Miller: It is offered, your honor, to assist your honor in identifying the matters of which you take judicial notice, and we take the position that what is here is a correct statement of the matters of which you take judicial notice. There are some additional matters that we will refer to.

The Court: Yes.

Mr. McManus: I think it would be appropriate at this time to bring to your honor's attention a matter about what there is no dispute, and that is that this is a civil contempt proceeding.

The Court: Yes, and not a criminal contempt proceeding.

Mr. Miller: Yes, that is correct. In addition to the record which we have just identified, we call your honor's attention to the envelope of exhibits which were introduced in the trial of this case. We do that because of the fact that in Mr. McManus' record he does not set out the exhibits, and we think that Exhibits I-1, I-2 and I-3 are very important in that they are the certification on the principal register of the patent office of the three trade marks that are involved here, and they definitely spell out the extent of the coverage of the trade mark.

The Court: Now, Judge, are you asking for judicial notice of the envelope with all the exhibits?

Mr. Miller: That's right, your honor, but I particularly call your attention to these three.

The Court: I see.

Mr. McManus: I would like to have something to say in that connection if I may at this time, your honor. I don't

agree to this procedure that counsel has suggested with respect to the entire envelope of exhibits because I might want to make at this time appropriate objections to the offer of some of these exhibits. However, I have no objection to your honor receiving in evidence as far as I am concerned, the three exhibits, I-1, I-2 and I-3, being photostatic copies of the registration of the trade marks in the United States Patent Office upon which the plaintiffs rely, and they may be received in evidence. However, I don't want by my silence to acquiesce in the procedure that the judge has suggested that you take judicial notice of all of these other exhibits that are in that envelope. I have no objection to the admission of the three photostats.

The Court: Of course, Mr. McManus, you would have the right to make your objections even if I take judicial notice of them upon the grounds that they are incompetent, irrelevant, or immaterial, or anything of that sort. If they are pertinent—counsel has asked me to take judicial notice. Upon what theory would you make your objections to them if they were offered in the trial of the case before?

Mr. McManus: Well, upon the theory, your honor, that this is a civil contempt proceeding in which the question of wilfulness and intent is material

The Court: Yes.

Mr. McManus: These exhibits are offered—were offered on the original trial of this case in support of all the issues pleaded in the plaintiff's complaint. I represent an individual defendant here.

The Court: If I may interrupt you, Mr. McManus, your thought is that they would not bear on the question of his alleged contempt?

Mr. McManus: That is correct, your honor.

The Court: Well, then, Judge, I think Mr. McManus should have the right to take his objection to them on the grounds—you asked me to take judicial notice of them and he counters by saying "even if you do they are not relevant in this case." That is the point you make?

Mr. McManus: That is true, your honor. And in our answer to the application for contempt, filed by the plaintiff, we have expressly raised the question of relevancy

and materiality with respect to some of the matters set forth in the application.

The Court: I get your point.

Mr. Miller: I would like to respond to that to this extent—that I am prepared to present, and will present, authorities to the effect that Mr. McManus cannot collaterally attack the judgment that was entered in this case. That injunction, being right or wrong, is binding upon the defendant Stover.

Mr. McManus: They won't need any authorities on that proposition. I'll agree to that.

The Court: You agree to it? Well, I think then my ruling should be that I will receive them subject to your objection and then when I consider the case I can determine whether they are relevant to the issue here.

Mr. McManus: Well, your honor, I confess to an almost total lack of familiarity with the proper procedure of matters of this kind in that this is my first experience with a contempt proceeding, and all that I want to do is preserve my client's rights and my record.

The Court: Why, of course you do.

Mr. McManus: It is then understood—and I don't want to delay these proceedings—I want to assist counsel in getting a proper record before the court as quickly as possible, at the same time trying to preserve my client's rights. May it be understood, Judge Miller, that with the exception of Exhibits I-1, I-2 and I-3, which are the photostatic copies of your registration, that I may be deemed to have the benefit of the objection that each and all of the rest of the exhibits which you offered are incompetent and immaterial, and have no relevancy to the issues presented before the court in this contempt proceedings, or for whatever that objection may be worth, with respect to each and all of the exhibits.

Mr. Miller: That is satisfactory.

The Court: I think that preserves your rights, Mr. McManus. And I will not overrule your objection but I'll receive it subject to your objection. And then when you submit your briefs I can look into the question of its competency.

Mr. McManus: We might also save time at this point, too, by suggesting that with respect to one of the trade marks, the circle enclosing the plow, the rake and the hoe, that we never claimed to have the right to use it, and never have used it since the decree was entered in this case, so that eliminates one of the trade marks in my opinion. Is that right, Judge?

Mr. Miller: Well, as far as I know, it's correct.

Mr. McManus: You don't contend that we have?

Mr. Miller: No, and it was conceded at the trial that you had no right to use it.

Mr. McManus: And that we hadn't been using it.

Mr. Miller: Yes.

Mr. McManus: So that just leaves the two trade marks.

The Court: Very well. Have I some way of identifying that trade mark that you are agreeing goes out of the case?

Mr. Miller: Yes, sir, the trade mark is on Exhibit I-2.

The Court: Whose exhibit is that, the plaintiff's? That is the plaintiff's exhibit I-2?

Mr. Miller: That's right, your honor.

The Court: Now that trade mark is out. There is no contention that he violated that trade mark.

Mr. Miller: That's right, your honor.

The Court: Or violated the judgment and decree in reference to it.

Mr. Miller: The case really hinges on the trade mark identified as I-1, which consists of the words "Farmers Union", and the trade mark which is Exhibit I-3, and refers to the words "Union Farmer."

The Court: The first one, Judge, that is on I-1, what does it refer to?

Mr. Miller: The words "Farmers Union." And I-3 refers to the words "Union Farmer".

The Court: Union Farmer. I take it that the contempt citation is that he violated those two trade marks?

Mr. Miller: That's right, your honor.

The Court: Very well.

Mr. Miller: Now, your honor, it is admitted in the pleadings that the defendant Stover is the—well, he's the president of the Iowa Farmers Union.

The Court: Now I didn't understand you, Judge.

Mr. Miller: He is the president of the Iowa Farmers Union, the defendant Fred W. Stover.

The Court: Is it an individual or a corporation?

Mr. Miller: Yes, he is an individual. He is the one that we are citing. Fred W. Stover.

Mr. McManus: He is the only defendant in this proceeding, your honor.

The Court: Now then, what about his store?

Mr. McManus: Mr. Stover is conceded to be the president of the Iowa Union Farmer Association, which was one of the defendants in the original case.

The Court: That is Union Farmers Association?

Mr. Miller: Iowa Union Farmers Association, your honor, and is also the president of the Iowa Farmers Union.

The Court: That's all admitted in the pleadings, is it?

Mr. Miller: That is my understanding. Isn't it?

The Court: Is that right, Mr. McManus?

Mr. McManus: Well, in paragraph 3 of the answer, your honor, we admit that this defendant Stover supervised the publication and distribution of a newspaper entitled "U. S. Farmers Union."

The Court: Yes.

Mr. McManus: That admission is made in our answer. And that he is the president of the Iowa Union Farmer Association, which caused that paper to be published and distributed. Those things there is no dispute about.

Mr. Miller: Well, in the paper it also recites that he is the president of the Iowa Farmers Union. I assume you don't question that, do you?

Mr. McManus: No. No, we don't question that. That's true also. But we object to that in this proceeding for the reason that it is irrelevant and immaterial because the Iowa Farmers Union does not publish the publication, the U. S. Farm Union News. It is published by the Iowa Union Farmer Association, a separate and distinct legal entity. We object to that part of what the judge says on the ground of relevancy and materiality.

The Court: Well, to shorten it up I will receive it subject to the objection counsel is making.

Mr. Miller: It becomes material in other respects, your honor. Now in connection with that admission, we would like to identify and offer in evidence four copies of the Iowa—

Mr. McManus: Wait a minute. Why don't you have them marked?

Mr. Miller: I will. Four copies of U. S. Farm Union News which are numbers 1, 2, 3, and 4 according to their numbering, and are exhibits 2, 3, 4 and 5, in this proceeding.

Mr. McManus: We object to the admission of Exhibits 2, 3, 4, and 5, and each of them, waiving any identification or foundation proof, however, for the reason that they are incompetent, immaterial and irrelevant, and don't tend to prove or establish any issue involved in this proceeding.

The Court: Yes, I will receive it subject to the objection, I will receive them, rather.

Mr. Miller: It is admitted in the pleadings that the headquarters of the two corporations, Iowa Farmers Union and Iowa Union Farmer Association, is situated at 517 Keo Way, Des Moines, Iowa, and that there is displayed at that address a large sign reading "Iowa Farmers Union." In connection with that admission in the pleadings, we desire to offer in evidence a photograph showing that sign, as Exhibit 6 in these proceedings.

Mr. McManus: We have no objection to its admission, your honor.

Mr. Miller: It is also admitted in the pleadings that the Iowa Farmers Union uses stationery with the name "Iowa Farmers Union" printed thereon, and that the defendant Stover, as president, uses that stationery, and for the purpose of identifying such stationery, we would like to offer, in evidence Exhibits 7 and 8.

Mr. McManus: Now, Judge Miller, I don't want to be captious and waste time, but I think we are wasting time here by introducing in evidence matters concerning which there is no dispute and with respect to matters that are admitted in the pleadings. It is expressly alleged in paragraph 3 of my answer that the defendant Iowa Farmers Union uses stationery with its trade name thereon, and we

admit that Stover has been using it. Now it seems to me concerning matters that there is no dispute, and there is no handwriting, that we are taking up time. However, if you want to offer those I have no objection. It is just a matter of saving time.

The Court: I suppose the judge is offering it as illustrative of the—

Mr. Miller: Yes, that's right, your honor.

The Court: Yes. Very well, for that purpose—

Mr. McManus: (Interposing) I have no objection.

Mr. Miller: In connection with the admission on page 2 of the answer of the defendant Stover, "that the defendant admits that he has conducted a campaign for the solicitation of members of the Iowa Farmers Union," it is stipulated that Julius Jacobson has assisted Mr. Stover in that project. Is that right?

Mr. McManus: Is that right? (Addressing Mr. Stover.)

Mr. Stover: (Nods head).

Mr. Miller: In connection with the admission in paragraph 3—

The Court: You mean of the answer, or—

Mr. Miller: Of the answer.—"that the defendant Stover supervises the publication and distribution of the newspaper entitled 'U. S. Farm Union News,'" it is also admitted that the defendant Stover is the author of editorials contained in the four issues, copies of which have been introduced in evidence herein.

The Court: Yes. Very well.

Mr. Miller: It is also admitted by the defendant Stover that he is and has been the editor of the U. S. Farm Union News at the time of the publication of the four issues introduced in evidence herein.

Mr. McManus: That may be admitted.

Mr. Miller: On page 7 of Plaintiff's Exhibit 5 is a statement that the Iowa Farmers Union has received educational funds during 1956 from the following Farmers Union Cooperatives: Farmers Union Livestock Commission of Omaha, $18.86; Farmers Union Livestock Commission, Sioux City, $139.29; Farmers Union Livestock Commis-

sion of Sioux Falls, $1342.18; The Farmers Union Marketing Association, St. Paul, $31.33; Farmers Union Grain Terminal Association, $731.42; and the Great Plains Supply Company, $2,628.36. I would like to inquire of counsel and the defendant if they deny that those are true statements?

Mr. McManus: We do not deny that they are true statements, and we do not deny that they are in the exhibit at the place that counsel read from, but we object to them as incompetent, immaterial and irrelevant, and having no probative force whatever upon the issues involved in this proceeding, involving purely a collateral matter that was in no way in issue, litigated or determined in the original law suit, and contend that they cannot be inquired into here for any purpose, as they are purely collateral to the law suit that was already tried in this court last spring.

The Court: It will be received subject to the objection. Judge, I understand that you are offering page 7 of Exhibit 5. Exhibit 5 has been heretofore offered in evidence?

Mr. Miller: That's right, your honor.

The Court: So that it is a matter then of just reading from a matter that was already offered in evidence.

Mr. Miller: That's right, your honor.

Mr. McManus: In view of the fact that he is apparently offering it for this specific purpose in support of a specific statement in his complaint or application for contempt, which we have denied, we are making this specific objection to apprise the court of our position with respect to that matter, and that is all.

The Court: Very well. It will be received subject to the objection. By receiving it that way then the record is full and complete.

Mr. Miller: The paper for all purposes is in the record as far as that is concerned, and that is the colloquy we had here a moment ago, your honor. I just wanted to raise the issue, your honor. That was the reason for it.

The Court: Yes.

Mr. McManus: Now, if I may, I also want to add to—no, I'll let the objection stand as it is. It is all right as far as I am concerned.

The Court: Plaintiff may proceed.

MAURICE O'REILLY,

called as a witness in behalf of the plaintiff, being first duly sworn by the Clerk, testified under oath as follows:

Direct Examination by F. M. Miller.

Q. Your name is Maurice O'Reilly? A. It is.

Q. Where do you live, Mr. O'Reilly? A. Barnum, Iowa.

Q. And are you a member of the plaintiff, National Farmers Union? A. I am.

Q. And are you employed by the plaintiff? A. Yes.

Q. In what capacity? A. As organization director for the National Farmers Union in Iowa.

Q. And how long have you been so employed? A. Since November 1st, 1955.

Q. Now, what is the nature of your duties as such? A. Well, my duties—

Mr. McManus: Now just a moment, Frederic. Now that is objected to as hearsay and incompetent, immaterial and irrelevant to any issue in this proceeding.

The Court: Well, I regard it as preliminary.

Mr. Miller: That's right, your honor.

The Court: And the court is interested in knowing what he did leading up to the crucial point about which you are going to give testimony. The objection is overruled.

A. Well, I have had charge of recruiting people and helpers in the reactivation or establishment of a National Farmers Union in Iowa. Assist in getting people to help me conduct meetings.

Q. And in your work do you travel about the state? A. Yes, I do.

Q. How much of the state do you cover? A. Oh, I have been—in the last year and a half clear across the state. I have been to almost every county in the state.

Q. And in traveling about the state have you contacted Mr. Julius Jacobson? A. Yes, I have.

Q. Is he the one that has been mentioned here as assisting the defendant Stover in the organization of the Iowa Farmers Union? A. He is.

Q. And has the activities of Mr. Jacobson in any way interfered with your work?

Mr. McManus: Now just a minute. That question is objected to for the reason—

The Court: It calls for an opinion and conclusion.

Mr. McManus: (continuing)—it calls for an opinion and conclusion.

The Court: It would call for a conclusion, Judge. He would have a right to say what he did and then the court or the fact trier would determine whether or not it interfered.

Q. In your contacts with other farmers for the purpose of securing members for the National Farmers Union organization do you run on to people who are members of Mr. Stover's organization? A. Yes, I have.

Q. Have you interviewed any of them who were confused between the organizations?

Mr. McManus: Just a minute. That question is objected to as improper in form, leading and suggestive, calling for hearsay and the opinion and conclusion of the witness, and incompetent.

Mr. Miller: Well, I will withdraw the question.

Q. What has been your experience with them?

Mr. McManus: Now just a minute. That question is objected to for the same reasons urged to the previous question, and is a leading question following a leading question pertaining to the same subject matter, and it is incompetent, immaterial and irrelevant.

The Court: If it pertains to the conflict, and I take it there was a certain conflict between the two organizations, he may tell what—

Mr. McManus: Excuse me, your honor. Are you holding that he may testify with respect to hearsay statements made by unidentified people at unidentified times and places?

The Court: As I understand, there was a conflict between the two organizations.

Mr. Miller: That's right, your honor.

Mr. McManus: That's correct.

The Court: Now then, he can testify about what he experienced in that conflict.

Mr. Miller: That's right.

Mr. McManus: But your honor, here we have a man charged with contempt of court.

The Court: I don't mean to interrupt you, but this would be preliminary to what was done. The court is interested in knowing just what he did that was contemptuous. Very well, he may answer.

Mr. Miller: Do you understand the question?

The Witness: I would like to have it again.

(The pending question was read to the witness as follows:)

"Q. What has been your experience with them?"

Q. Now will you answer the question. A. Well, I have called on several farmers who had, I assume, previously been members of the Iowa Farmers Union, and in one instance I had made arrangements to have a meeting in that county or in a town near these people and the meeting had been tentatively scheduled for a date four or five days after I was there, and then in a couple of days I received a postal card from the man telling me that the meeting would have to be called off for the time being.

Mr. McManus: Now just a minute. Now I move to strike out all of that answer for the reasons urged in the objection, and separately move to strike that he had contacted people he had assumed who had previously been members of the Iowa Farmers Union as the opinion of the witness, and incompetent. That he arranged to have a meeting, and received a post card is hearsay and incompetent. None of his answer has any probative force or any issue before this court.

The Court: Up to this time you are right, but it is leading up and we want to find out what the facts are. It may be leading up to something. The objection is overruled.

Mr. McManus: Very well.

Mr. Miller: What I am trying to do, your honor, just so that we understand each other, I'm trying to get evidence of a verbal act. I admit that this would be hearsay under ordinary circumstances, but I believe I am entitled to it.

The Court: Yes. I am admitting it up to this time.

Q. Now in these experiences such as you have recounted, was there any reason given why these people were not interested in the meeting?

Mr. McManus: Now just a minute. That is objected to as calling for the opinion and conclusion of the witness as to any reason given, and incompetent, immaterial and irrelevant.

The Court: That is on a vital matter. I think your objection is good, but then it is leading up to something, so the witness may answer. The right is reserved to you to move to strike it all out.

Q. What was it?

Mr. McManus: Same objection.

The Court: Objection overruled.

Mr. McManus: In other words, counsel asked him a question, your honor, and I wasn't afforded an opportunity to make an objection before he started to answer, and I make the same objection that I made previously, and move to strike the answer so far for the reason given.

The Court: It may be understood that you make the same objection to this entire line of questioning so that you do not have to repeat it.

Mr. McManus: Thank you, your honor.

A. Well, this particular man that I talked to told me later on that they were going to wait until the confusion was settled and determined who had the right to organize under the name of Farmers Union in Iowa.

Mr. McManus: I move to strike that answer for the reasons urged in the objection, and for the reason that

no man is identified and no time and placed fixed, and it is hearsay, incompetent, immaterial and irrelevant.

The Court: It is all preliminary. The objection will be overruled at this time.

Q. Mr. O'Reilly, in arranging these meetings just what did you do? A. I would go out and contact farmers, some of whom I have known myself, and others who had been referred to me by friends of mine, and ask them to set up or arrange for a meeting, at which time we could discuss setting up an organization in that county for the National Farmers Union.

Mr. Miller: Your honor, it has been admitted in the former trial that the charter of the Iowa Farmers Union was cancelled by the National Farmers Union in March of 1954. Now that is a matter about which there is no dispute, and this all of course ties in with that fact.

The Court: Now the charter of the National Farmers Union—

Mr. Miller: No, the National Farmers Union revoked the charter of the Iowa Farmers Union.

The Court: I see.

Mr. Miller: In March of 1954. It is admitted by the pleadings that since that time the Iowa Farmers Union is still soliciting new members, and that that solicitation has continued since they were enjoined from so doing, as we interpret the decree, and this evidence is to show the effect of their violation of the decree upon our campaign to reactivate and organize in this state. Now Mr. McManus has a legal question on it, but this is submitted to you, your honor, to understand the factual background.

Mr. McManus: Of course I think I can say that we don't concede that what counsel has said is true with respect to our being enjoined from soliciting members, just to clarify our position too.

The Court: Yes.

Mr. Miller: I grant that.

Q. Now, as a result of this solicitation have you been able to get new members?

Mr. McManus: Now just a minute. That question is an obvious shotgun, broad-sided question that I can't

understand just what is sought to be elicited by that question, and I object to it as improper in form, incompetent, immaterial and irrelevant.' Calling for the opinion and conclusion of the witness, and incompetent.

The Court: The objection is overruled at this time. Somewhere along the line the defendant must have been at fault in connection with the solicitation of members.

Mr. Miller: Your honor, it all goes to the interpretation of the injunction.

The Court: Yes, that's right.

Mr. Miller: And we assume that we have to show some damage.

The Court: I will receive it subject to the objection so that you may—

Mr. McManus: (Interposing) And I assume that the remark that your honor just made before the colloquy with Judge Miller was intended to apply to your honor's state of mind with respect to the receipt of the evidence, and not to make any declaration.

The Court: Oh, no, no. I have no reason at all.

Mr. McManus: I just wanted to keep the record straight.

Mr. Miller: Read the question to him.

(The pending question was read to the witness as follows:

"Q. Now, as result of this solicitation have you been able to get new members?")

A. Not as many, and not as fast as we felt we would ordinarily expect to get them.

Mr. McManus: Now move to strike that answer out for the reasons urged in the objection, and as the opinion and conclusion of the witness, and incompetent.

The Court: Well, of course that was a conclusion. The substance of it was members are hard to get. There may have been some fault for it, and that will appear I suppose.

Mr. Miller: Yes, sir.

The Court: The objection will be overruled at this time.

Q. In the conduct of this campaign did you explain to these people the situation in regard to a local Iowa organization for the National Farmers Union? A. Yes, I did.

Mr. McManus: Same objection. Hearsay.

The Court: Objection overruled at this time.

Q. What explanation—

Mr. McManus: If your honor please, I wonder if you would see fit to caution the witness to afford me a little pause between the question and the objection because I want to make my record on some of these important things.

The Court: So that your record may be made up, let it be understood that you make similar objections to this whole line of testimony.

Mr. McManus: Without the necessity for repeating it, and that is agreeable to the court and counsel?

Mr. Miller: That is agreeable to us.

The Court: So that you won't have to repeat it.

Q. Now what explanation did you give them? A. That we were organizing in Iowa to reactivate the Iowa Division of the National Farmers Union.

Q. And did you say anything about the fact that Mr. Stover's organization had had their charter revoked?

Mr. McManus: Now just a minute. Now that is objected to. It is leading and improper in form. We are not trying out in this proceeding the original case. This is purely a contempt proceeding. We object to this question for those reasons.

The Court: The objection is overruled at this time, with the right reserved to you to move to strike it out later on.

Q. Now the matter that I have been inquiring about, have those matters occurred since or before June 13th, 1956? A. Well, they occurred both before June 13th—before the decree was entered, and have continued to occur since the decree was entered on June 13th, I believe it was.

The Court: What year?

Mr. Miller: 1956?

The Witness: 1956.

Q. Do you know how many members the National Farmers Union has in Iowa at this time.

Mr. McManus: That is objected to as immaterial.

The Court: Well, it may be. The objection will be overruled at this time.

A. Yes.

Q. How many are there?

Mr. McManus: Same objection.

A. As of now about 3,150 or 3,200.

Q. Do you know what the minimum requirement is for the issuance of a charter to a state organization? A. Yes.

Q. What is it? A. Five thousand members.

Q. How long have you been engaged in this campaign in Iowa undertaking to get sufficient members to get a new charter? A. Since about the 25th of November, 1955.

Q. Can you explain to me in a little more detail the occurrences that have been experienced by you in trying to get these new members in Iowa?

Mr. McManus: Now just a minute. That is objected to unless the time and place and the person and circumstances is first fixed and the foundation laid. It is incompetent, immaterial and irrelevant.

Q. Well, as to time, make it subsequent to June 13, 1956, and as to place, you can name the place in your answer. A. Well,—

Mr. McManus: Same objection.

The Court: The objection will be overruled at this time.

A. (Continuing)—as one example, in Buena Vista County we had arranged with some farmers in that area of the area of Albert City to set up a meeting, and then in about a week, at a date about a week later, and upon returning to our office, I had a postal card from the man who had agreed to set up the meeting telling me that it would not be possible to have the meeting at the specified time and that he would get in touch with us later.

Q. Did he get in touch with you later? A. He did not.

Q. Well, did you have any other experiences? A. Well, then following up that meeting I went back about the 27th or 8th of December and talked to the man in Albert City who had agreed to set up the meeting last fall, and he told me that the reason they didn't set it up was that they wanted to wait until the confusion had been settled and which organization was going to be the Farmers Union in Iowa.

Q. Now did you have any—

Mr. McManus: Now, your honor, I take it my objection is going along to all these questions?

The Court: Yes. I understood your objection would run to this entire line.

Q. (By Mr. Miller—Continuing) Did you have any other experience of that character, and if so, tell us the time and place where you had those experiences. A. Well, I had an experience similar to that in Clinton County in I believe about the first week in October and we had a group of farmers in to a meeting to discuss the possibility of organizing in that county and setting up a county organization, and two or three men came up to me after the meeting and stated that they didn't think it would be possible to set up or start organizing in the county until the confusion of the two organizations calling themselves Farmers Union was finally settled or determined.

Q. Did you have any other experiences of that kind? A. Yes, I had the same experience in Dubuque County, where we would get people in the county—farmers in the county to call in ten or fifteen men to talk or discuss the possibility of organizing in the county, and invariably they would state that there was no use in trying to organize until it was determined which Farmers Union had the right to organize in Iowa.

Q. Now what time was that? A. Oh, that would be in last summer and fall.

Q. Do you know how much money has been expended by you since June 13, 1956 in this organization work for the National Farmers Union in Iowa? A. Yes.

Q. How much has it been? A. Well, since the decree was filed in June, middle of June, or the 13th of June,

about thirty-seven or eight thousand dollars. In addition to that there has been material furnished, publications and news letters furnished from the National Office in Denver of which I have no record of.

Mr. Miller: You may cross examine.

Cross Examination.

By J. R. McManus:

I am not the only salaried employee engaged in organization for the National Farmers Union in Iowa. We have a man named Howard Potter who has been helping in the state since about July 1st in organization work. I did not see the defendant, Fred W. Stover, in Buena Vista County on any occasion when I visited that county. I did not see Fred Stover in Clinton County at any time or place since June 13, 1956. I saw a man in Buena Vista County named Carl Benna of Albert City. He lives on a farm near Albert City. I also talked there to a man by the name of Peterson, over by Sulphur Springs, I believe it was. He is the one that sent me up to see Benna. I believe his first name is Carl. I am not sure though. I believe that's about all I have talked to in Buena Vista County. I talked to Anton Green and Fred Bushlaugh in connection with the incident I have related which occurred in Clinton County. Green and Bushlaugh live in Grand Mound. I am unable to give the names and addresses of anyone else at the meeting. I do have something to do with the distribution of literature from the Denver office of the National. The publications were sent to me in bulk and they were sent out under my supervision to various people in the state. Some were distributed by mail and by hand-outs at meetings. We have had considerable difficulty in obtaining new members.

Q. And you have some competition in that respect with another national farm organization that has been operating in Iowa for many years commonly known as the Farm Bureau, have you not? A. You mean they are a competitive organization?

Q. Yes, they are trying to get new members all the time, too, are they not? A. Yes, that's right.

Q. And they are working in the same field that you are, among the farmers? A. Quite generally, yes.

Q. And they have a membership in Iowa of between 140 and 150 thousand members, do they not? A. The Farm Bureau?

Q. Yes, sir. A. I don't know what they have this year. I believe last year they claimed 130 or 138 thousand.

Q. There is also another national farmers organization organizing and soliciting members in Iowa known as "National Farmers Organization", is there not? A. That's right.

Q. They are also competing with the organization for membership all the time, aren't they? A. Yes. In certain areas. In other areas they are not.

Q. But you have encountered their competition in certain parts of the state? A. They are very friendly with our organization.

Q. I didn't ask you that. You have encountered their competition in certain parts of the state, haven't you? A. Yes, sir.

Q. And you have found that they have members in certain parts of the state? A. Yes.

Q. I am referring to the National Farm Organization? A. That's right, yes, sir.

Q. Now the Farm Bureau has been in existence a long time, hasn't it? A. Since about 1917, I believe.

Q. And been operating in Iowa for a long time, hasn't it? A. Yes.

Q. You have been operating here only since November, 1955, is that right, in this organization work? A. That's right. The Farmers Union has been in Iowa since 1916 I believe.

Q. I am talking about you, personally. You have been engaged in the organization work since November, 1955? A. That's right. Yes, sir.

I have spent all my time in Iowa engaged in such work from about the first of June until now. In a little more than six months I have spent thirty-seven or thirty-eight thousand dollars. Prior to June first, we had about 1,600

members in Iowa. Between 15 and 16 hundred. At a cost of thirty-seven to thirty-eight thousand dollars. I have about doubled that in the last six or seven months. The last time I talked to Mr. Benna at Buena Vista he told me he had been a member of the Farmers Union for years but outside of what he told me I had no other knowledge. He is the only one that told me personally that he belonged. In the last six or seven months I have had a good many meetings. I suppose an average of three to four a week. I suppose at meetings and in personal contacts and by telephone I have, myself, contacted or talked to in Iowa since June 13, 1956, perhaps three or four thousand or more farmers. It is pretty hard to estimate. I am giving you my best judgment.

Re-Direct Examination.

In traveling about the state I saw Mr. Jacobson I suppose about six or seven times but I visited with him over at Grand Mound in Clinton County during the first or second week of October. He told me what he was doing there.

Q. What did he say?

By Mr. McManus: Now just a minute. That is objected to for the reason that it calls for hearsay. No foundation laid. There is no showing or any power or authority upon the part of Julius Jacobson to bind this defendant or any of the defendants and it is incompetent, immaterial and irrelevant, and not re-direct.

The Court: Well, that is true. It may be that the purpose of the question is to enable—to find out what this witness did after his conversation with Mr. Jacobson.

Mr. Miller: Well, it has been conceded, your Honor, that Mr. Jacobson is assisting the defendant Stover in this—

The Court: An agent for him?

Mr. Miller: Yes, Your Honor.

The Court: Upon that theory you are offering it?

Mr. Miller: That's right.

The Court: The objection will be overruled.

A. He told me that he was doing organization work for Mr. Stover of the Iowa Farmers Union, and I asked him if he had been working in most of the counties and he said as many of them as he could get in.

In these travels I saw some of the defendants' newspapers. I also saw a letter or a newsletter or a statement that was mailed out, oh, along I think in December, the early part of December or the last part of November and I have seen his paper in elevators and different places where I have been. Some of the people that I have solicited are also Farm Bureau members. Some of them are and some of them have been. Some of them that are Farm Bureau members joined the Farmers Union and many of the National Farmers Organization joined the Farmers Union.

Mr. McManus: Now before this witness leaves the stand I move to strike all of his testimony for the reasons urged in the various objections made at the time the questions were propounded to the witness, and for the further reason that the testimony of this witness contains no probative proof of any issue involved in this proceeding.

The Court: I will take the motion with the case. I will not rule on it at this time.

Mr. McManus: I understand, Your Honor.

(Witness excused.)

It was then agreed between counsel that Mr. Stover would ascertain the facts in regard to certain receipts and that the plaintiff could put Mr. Stover on the stand and interrogate him and elicit the information counsel for the plaintiff sought to prove in connection with those receipts and with that understanding, and reserving the right to put in that proof, the plaintiff rested.

Mr. McManus: Well, now, Your Honor, as I say, due to my unfamiliarity with the method of proceeding in matters of this kind, I assume it is unnecessary for me to make any motion.

The Court: No, sir, it would not, and I take it we are all—these proceedings are not very common in the courts. They are not very usual, I mean.

Mr. McManus: Well, in any event it will do no harm, and for the record I move at this time to dismiss the proceedings for the reason that the plaintiff, or applicant, has wholly failed to establish by competent proof the material allegations of his application, as amended, and there is no showing in this record which would warrant the court in finding the defendant guilty of the accusations and charges contained in the complaint.

The Court: Yes. I couldn't intelligently rule on that at this time.

Mr. McManus: I understand, your honor. I am simply making it for the record. Now, are you ready to proceed now, your honor?

The Court: Yes. I am.

(Defendant's Evidence.)

Mr. McManus: Judge Miller, do you have a copy of the original memorandum brief that you filed in this court at the time you filed your complaint?

Mr. Miller: I think so.

Mr. McManus: If so, I wish you would produce that for me, and I ask the court to take judicial notice of the fact that in the original complaint and the amendment to the complaint repeated references were made to trade names preceding trade marks and other marks. In other words, I am asking you to take specific notice of the fact that very frequently in the original complaint reference was made to "trade names"; and the purpose of this offer, your honor, is for the purpose of showing that on the trial they abandoned the trade name theory, and when the case ended up and was submitted, it involved an infringement of three registered trade marks. And that is the purpose of that.

The Court: I see no reason why I shouldn't take judicial notice of the pleadings as attested by counsel.

Mr. Miller: That's right. We have no objection to that. However, as far as the brief was concerned, I don't think it ever was made a part of the record. This memorandum brief that we delivered to counsel, I don't—

Mr. McManus: (Interposing) Is that it, Fred?

Mr. Miller: Yes, that is it.

The Court: Briefs are not a part of the record, properly.

Mr. McManus: He filed it at the time of the complaint, and I wasn't in the case at that time, your honor, and I didn't know whether it had been filed and made a part of the record in this case or not.

The Court: Usually they are not. Conceivably, they could be made a part of the record.

Defendant's Exhibit "A" marked for Identification.

Mr. Miller: Your honor, for the purpose of the record, when this case was commenced, George Cosson and his son Clarence Cosson represented the defendants, and I practice law the hard way. I write my brief before I write my petition.

The Court: You do it the wise way.

Mr. Miller: So when I served the petition on Mr. Cosson I also delivered him a copy of my trial brief, but the brief that was actually delivered to Judge Harper, as I remember, was different than this.

Mr. Markman: This was the one that was delivered to Judge Harper, Judge Miller. (Indicating). I don't know whether that is the one Mr. McManus is referring to or not.

Mr. McManus: I am referring to the one that you just mentioned that you delivered to Mr. Cosson with your complaint.

Mr. Markman: That wasn't the one.

Mr. Miller: This was the one that I delivered to Judge Harper (indicating).

Then to clarify the record, this is the brief (indicating).

Mr. McManus: No, wait a minute, let me have the other one.

Mr. Miller: Let's have the other brief. (Brief handed to counsel).

Defendant's Exhibit "A" Remarked as Exhibit "B". New Exhibit "A" Marked.

Mr. McManus: Now, Judge Miller, Exhibit "A" is a copy of the original memorandum for trial brief which you supplied to George Cosson at the time of the filing of your original complaint in this case. That's true, is it not?

Mr. Miller: That is correct.

Mr. McManus: And Exhibit "B" is the copy of the brief that you filed with Judge Roy Harper, the presiding judge, by assignment, at the conclusion of the trial of the case in this court, or thereafter.

Mr. Miller: Well, it was delivered to Judge Harper on the 1st of March, which was shortly after the trial was had.

Mr. Markman: Mr. McManus, so there will be no misunderstanding, a copy of this brief that was delivered to Judge Harper was also delivered simultaneously to Mr. Cosson.

Mr. McManus: Well, that's—

Mr. Miller: (Interposing) Mr. Cosson's acceptance of service is on the brief.

Mr. McManus: Now, your honor, not for the purpose of inviting the consideration of the contents in their entirety, I am offering Exhibit "A" which is the memorandum for trial brief which accompanied the filing of the original complaint and which was delivered to counsel in this case, for the purpose of pointing out that repeatedly throughout that brief authorities are cited as dealing with trade names as distinguished from authorities cited dealing with the subject of trade marks, and especially registered trade marks; and I am offering Exhibit "A" in behalf of the defendant, and I am offering Exhibit "B" which is a copy of plaintiff's brief and argument filed by plaintiff's counsel with Judge Roy Harper, judge by assignment, before whom this case was tried, which was filed with the court and delivered to defendant's counsel by plaintiff's counsel on or about the 1st day of March, 1956; and I'm filing it for the purpose of attempting to show to the court the change of front which had occurred between the time of the filing of the case and the time of trial of the case as the case was tried prior to March 1st, 1956.

The Court: The original brief is on one theory and the brief before Judge Harper was another?

Mr. McManus: That is correct, your honor. That is the only purpose for offering these briefs.

Mr. Miller: We object to the original brief being filed because it is not a part of the record, and never has been; and we also object to the two briefs on the theory that while Mr. McManus disclaims any intention to do so, the effect of what he is trying to do would be to impeach the judgment and decree herein, which he cannot do in these proceedings.

The Court: No, he can't do that. However, counsel says that he wants to show—

Mr. Miller: (Interposing) Yes.

The Court: (Continuing)—that is, the different emphasis that was placed upon the issues in the case. For that purpose it will be received subject to your objection, Judge, so that I may consider it.

Mr. McManus: Now, Mr. Stover, will you please rise and be sworn.

FRED W. STOVER

called as a witness in his own behalf, being first duly sworn by the Clerk, testified under oath as follows:

Direct Examination.

By J. R. McManus:

My name is Fred W. Stover. I reside in Hampton, Iowa. I am a farmer. Of course, I am also engaged in farm organization work. I am the man who has been spoken of here this morning as president of the Iowa Farmers Union and of the Iowa Union Farmers Association. The U. S. Farm Union News publication which has been introduced in evidence here as Exhibits 2, 3, 4 and 5 is published by the Iowa Union Farmer Association. It is a separate and distinct corporation from the Iowa Farmers Union. The two organizations have entirely separate boards of directors; one board of directors for the Iowa Union Farmer

Association; another board of directors for the Iowa Farmers Union. There are no interlocking or no one of the directors that is a director of both. The two separate corporations have no common membership on the boards. I am president of both. The defendants were represented in this case originally by George Cosson and Clarence Cosson as our attorneys. They are still acting as attorneys of record in the case in the United States Court of Appeals for the 8th Circuit.

I recall having a meeting of the board of directors of the Iowa Union Farmer Association in the month of March, 1956, in Des Moines, Iowa. I was present at that meeting. All of our board were present. There were other members there, other officers, and even some members who were not directors. Mr. Cosson was there. He addressed our board at that time. There were several meetings held at that time. One was held over at the Elliott Hotel and another one in the Plaza Hotel. One was a regular quarterly meeting and the other was a special meeting. They were held at different times during the month. I can't remember the dates they were held but our regular March meeting is usually held on the second Monday of the month, and unless there are special reasons why certain of them can't come, so I presume that was the date. The regular meeting was held at the Elliott Hotel in March, 1955, which was shortly after this suit was instituted. It was held in the Elliott Hotel. Mr. Cosson addressed that meeting.

Q. And what did he tell you at that time?

Mr. Miller: That is objected to as in no way binding on the plaintiff, entirely collateral to any of the issues in this case, and an attempt, an apparent attempt to impeach the judicial proceeding of the trial of the main case.

The Court: Well, it bears on the subject of his motive, I take it, upon advice of counsel.

Mr. McManus: It is offered as an exception to the hearsay rule as bearing upon his state of mind, and intent, and advice of counsel.

The Court: I will overrule the objection at this time. That was Iowa Farmers Union, was it?

The Witness: Yes.

Mr. Miller: May I have a further objection that advice of counsel is not a defense in contempt proceedings.

Mr. McManus: It isn't contended that it is a complete defense.

The Court: I think it would bear, would it not, however, upon his purpose and upon what he did, in mitigation of damages, or in mitigation of the wrong.

Mr. Miller: It might be in mitigation, but it is no defense.

The Court: No, it would not be a defense. The objection will be overruled at this time and then I can look into—

Q. Now will you proceed. A. Mr. Cosson told the board at that time, and advised the board that we change the name to the Iowa Farmers Union, and that we at no time should represent that we were affiliated or spoke for the National organization. And he gave us this advice because of a pretrial conference they had held before Judge William Riley.

The Court: This was a meeting of Iowa Farmers Union, was it?

Mr. McManus: That's right. The board of directors of Iowa Farmers Union, held in March, 1955.

Q. Now, what further matters were brought to your attention at that time by Judge Cosson in connection with what he told you had transpired or been said at the pretrial conference?

Mr. Miller: May I have the same objection stand as to all this line of testimony?

The Court: You may. It is understood that the same objection will run to it all.

A. Well, he told us that if we would do that, change our name and not represent that we were affiliated with the National, and not use the full name, Farmers Educational and Cooperative Union of America, Iowa Division, which implied affiliation, then he said there probably wouldn't be a law suit, and he said that Judge Riley had said that in that event there probably wouldn't be a suit, and that it would be a moot case.

Mr. Cosson also told us at that conference that we were in no way to claim to represent or speak for the National organization. I had not attended the pretrial conference so that all that I knew about what transpired there was what I was told by Mr. Cosson on that occasion. I believed what he told me. We relied on it and we followed the instructions. Immediately after that we prepared a letter. Our board prepared a letter for the membership, and that was published in the April issue of our paper in which we instructed all of our members and officers accordingly, and told them that in no wise should they claim that we were affiliated and in no wise should they pretend to speak for the National Farmers Union. I have a copy of that issue of our publication here.

Defendant's Exhibit "C" Marked.

Exhibit "C" is the April, 1955, of our paper issued by the Iowa Union Farmer Association. On page 7 of Exhibit "C" the matter appears that I told you about which I said was published following the meeting of the board in March prior to the amendment of the articles in September. ~~I have taken~~ a pen at your request and put a couple of marks across the upper lefthand corner of page 7 to bracket and enclose the matters that I mentioned, for the convenience of the court. The portion that I referred to that we sent out to the membership instructing them that they were no longer to make any claim that they were a part of, or affiliated with, the National Farmers Union, appears in the upper lefthand portion of page 7 of Exhibit "C".

Mr. McManus: Now we offer in evidence that part of the paper, Exhibit "C", appearing in the upper lefthand corner of page 7 thereof, which the witness has enclosed with a pen and ink outline.

Mr. Miller: That's objected to as a self serving declaration; no way binding on the plaintiff, and made prior to the entry of the decree herein, and in no way effective to in any way impeach that decree or modify it in any way.

The Court: Well, I assume that it is a part of a general plan of proof, and it will be received subject to the objection, with the right always reserved to counsel to move to strike it out later.

That publication, Exhibit "C", was caused to be sent to all of the Iowa Farmers Union membership in Iowa at or about the time the publication was made. In September we amended the articles of incorporation and accomplished the change of name of that defendant to Iowa Farmers Union.

Q. What was the purpose of sending out that information contained in Exhibit "C", that we have heretofore offered in evidence, to your memory?

Mr. Miller: Same objection. Calling for an opinion and conclusion of the witness.

The Court: That calls for the identical answer he made a while ago, doesn't it?

Mr. McManus: That's right.

The Court: The objection is overruled at this time.

A. Well, the purpose was—as I said, we couldn't very well—we didn't know how we could legally change the name and change it at the Secretary of State's office except by the way our constitution and by-laws are set up, only the convention can change the name. The board action and the letter to the members was a recommendation which, as far as I know, was followed. Our annual meeting was set up to be held in September. At our September meeting we accomplished the necessary legal proceeding to change the name. We didn't know how we could have done that prior to September, 1955, without great expense. At and prior to June 15, 1956, the Iowa Union Farmer Association published this paper, Exhibit "C", under the name of Iowa Union Farmer. After June 13, 1956, there was a change made in the name of the paper issued and published and distributed by the Iowa Union Farmer Association. We called a meeting of the board of directors and they changed it. We changed the name to U. S. Farm Union News immediately after June 13, 1956.

Q. And what was the purpose of changing the name of the publication, if you know?

Mr. Miller: Same objection as heretofore urged. Calling for an opinion and conclusion of the witness, and not binding on the court. Incompetent.

The Court: Well, since he is the one charged with contempt, I think he would have a right to say what was done. The objection will be overruled at this time.

A. There were a number of reasons why we changed it, one of which, of course, was to make sure that in no way could we be accused of violating the injunction.

Q. What were the other reasons, if you know?

Mr. Miller: Same objection.

The Court: The objection is overruled at this time.

A. Some of the reasons were explained in that issue of the paper.

I refer to that issue which is known in this record as Exhibit 2. It was because of expanding it that we thought it would be better to use the name U. S. Farm Union News. We wanted to give the scope of the coverage a broader connotation than the boundaries of Iowa. In the initial issue of the U. S. Farm Union News, which has been marked in this record exhibit 2, under the name of the publication which appears in bold type at the top of the first page there appears in parenthesis below it, "Formerly Iowa Union Farmer." I see that on the first page of Exhibit 2.

Q. Do you know the purpose of putting the words that I have read below the name U. S. Farm Union News on the first page of the initial issue of your publication known as Exhibit 2?

Mr. Miller: Same objection as heretofore urged.

Mr. McManus: Wait a minute, please, Frederic. Will you do me the kindness to read the question.

(The pending question was read back to Mr. McManus).

Mr. Miller: Same objection as heretofore urged to this line of questioning.

Mr. McManus: Just answer yes or no.

The Court: Objection overruled at this time.

Q. Just answer yes or no.

The Court: You asked him what the purpose was?

Mr. McManus: Yes.

The Court: He couldn't answer that yes or no.

Mr. McManus: I am asking him what the purpose was.

The Court: Yes.

Q. What was the purpose, if you know?

Mr. Miller: Same objection.

The Court: Overruled at this time.

A. The purpose was to show the members and the people who had paid for the Iowa Union Farmer that this was replacing the Iowa Union Farmer.

The Court: Are you at a point where we might suspend?

Mr. McManus: Yes, your honor, we are.

Further Direct Examination.

I am Fred W. Stover, the respondent in this proceeding, who was on the stand at the time the court recessed at noon. Following the entry of the decree in the case at bar, I became aware of its contents. I also became aware of the memorandum of opinion filed by the presiding judge, Roy Harper, in this court in this case on May 26, 1956. I read it. Following the entry of that decree, I conferred with our counsel, George and Clarence Cosson. They are still my counsel in these cases. In addition to the Farmers Union litigation they are also our attorneys in another case that is very important that they have been busy on, and furthermore, at the time of receiving the decree from Judge Harper, they questioned whether they would have time to handle all of the cases, and we particularly wanted someone that was acquainted with trade name litigation. Since the entry of the decree they have been engaged for some time on a libel case. That case is now pending on application for a writ of certiorari to the Supreme Court of Iowa from the Supreme Court of the United States. They have been and still are engaged in that case.

Q. Now you say that you conferred with those gentlemen following the receipt of the decree in this case and the memorandum opinion that I referred to, and as a result of that conference what, if anything, did you do with respect to obtaining further advice with respect to how you should proceed concerning the decree that had been entered in this case?

Mr. Miller: May this line of testimony be subject to the same objection as heretofore—

The Court: Yes, it may, Judge. The same objection, I think, however, it would be competent. I'm not ruling on that because I want to look into it further. On the question of the purpose, don't you know, and the question of punishment if it is found that he is guilty of contempt.

Mr. McManus: It is also offered as bearing on the question of his state of mind, and intent, your honor.

The Court: Yes.

Q. Now will you do me the kindness to answer my question. A. It was recommended that we get an attorney who was acquainted with trade name registration, and had experience in it, and Mr. Riley McManus was recommended to us for having taken cases to the Circuit Court of Appeals, and I remember one case, Beneficial Industrial Loan Corporation vs. Kline that he had handled so we consulted Mr. McManus in the matter and he gave us advice as to what to do.

Pursuant to suggestions from Mr. Cosson I called on Mr. McManus. I brought with me and gave to him all material we had on the case, the pleadings and briefs and copies of the memorandum opinion and the decree. You gave us an answer on the matter. I forget now within what time it took you to read. I don't remember, it was shortly thereafter. I got an opinion from you the day I called on you. You read the decree and you said you wanted to read all the matters pertaining to it, and some cases. I forget now how many days later we talked to you again. I came back to see you later. You told us that apparently the trade mark was mainly in litigation—in litigation involving a trade mark, and that you told us that as long as we just used the trade name Iowa Farmers Union and didn't use the trade mark, we would be alright. I think I recall upon the occasion of my second visit your reading to me aloud the language contained in the opening paragraph of the memorandum opinion filed in this case by Judge Roy W. Harper, the presiding judge who was sitting by assignment in this case. I remember your calling my attention to the original complaint, a copy of

which I had furnished you. I remember your calling to my attention the original memorandum brief which counsel for plaintiff had given to Mr. Cosson at the time of the filing of the complaint. I distinctly remember your calling my attention to the fact that in those last two documents that I have mentioned there was frequent repetition of the term or expression "trade names", which appeared therein. I remember your calling to my attention the final brief in the case presented by counsel for the plaintiff to the court and counsel on or about March 1st, 1956. I remember that you read aloud to me the first paragraph of Judge Harper's opinion when I was seeking advice from you as to what course I should pursue in an attempt to avoid violating the decree. The language referred to read as follows: "This action was brought by Farmers Educational and Cooperative Union of America, a Texas Corporation, against Farmers Educational and Cooperative Union of America, Iowa Division, and Service Association, a corporation, et al., to enjoin the defendants from an alleged infringement of three of plaintiffs' trade marks, all of which are registered on the principal registers of the United States Patent Office. The trade marks are: One, a symbol and service mark consisting of a plow, rake and hoe, surrounded by a circle; Two, a collective mark for goods consisting of the words "Union Farmer", used for newspapers published by the plaintiff and its divisional organizations, and; Three, a service mark consisting of the words "Farmers Union", used by plaintiff in the sale and advertisement of services. I also recall your reading to me at the same time this language from that memorandum opinion which appears on page 41 of Exhibit 1 "Jurisdiction is conferred upon this court by the Lanham Act, under which the suit is brought." Following that you gave expression to me as to the views of the law concerning the matter of the corporations' use of the trade names "Iowa Farmers Union" and "Iowa Union Farmer Association". You said those were both trade names and that Judge Harper had mentioned this litigation involving infringement of trade marks, and that using those names would not be a violation of the injunction.

I was familiar at that time with the distinctive type and style and lettering used subsequent to the registration of the trade mark "Union Farmer" as it appears in Exhibit I-3 which has been admitted in evidence in this case. I certainly was familiar at that time also with the type and kind and style of distinctive printing used in the letterheads of the National Farmers Union prior to the registration date of these trade marks. Subsequent to my final conference with you I called our board of directors of the Iowa Farmers Union and the board of directors of the Iowa Union Farmer Association to a meeting shortly after June 13, 1956. We had a full attendance of the board at that time. The meeting was held at 517 Keo. I presided. At that time there was exhibited there the papers that I mentioned a while ago, the complaint, the pleadings, the memorandum opinion and findings of fact and conclusions of law and decree of Judge Harper and we went over all those things carefully. Our meeting lasted a long day. We were until late in the evening.

Defendants' Exhibits "D", "E", "F" and "G" Marked for Identification.

Exhibit "D" was received by me in the usual and ordinary course of the United States mail. It is an example of the type of letterhead and style and type of printing in use by the National Farmers Union prior to the adoption of these registered trade marks in 1954.

Exhibit "E", as I understand it, is the service mark after the National Farmers Union got their copy-right. Exhibit "F" contains the typical way in which the paper was set up on the National Union Farmer prior to the adoption of these trade marks. Exhibit "F" is a copy of the National Union Farmer. Exhibit "G" in the upper lefthand corner of the front page of that newspaper contains the kind of mark usually found on plaintiffs' newspapers after the registration of its trade mark. Exhibit "G" is a newspaper issued under the direction and supervision of the Farmers Educational and Cooperative Union of America, the national organization.

At this meeting of the board held shortly after June 13, 1956, this matter was discussed as to how our board and organization should proceed for purposes of avoiding

coming in conflict with our violating the terms of the decree in this case. These various papers that I have mentioned were exhibited to and read at that board meeting. The primary purpose and reason for that meeting was to consider the opinion or injunction decree handed down by Judge Harper and to decide what we could do in the meantime while it was on appeal and we wanted to make sure that we didn't do anything that would give anyone reason to accuse us of violating the injunction. At that time I told the board the opinion you have expressed to me with respect to the use of the two trade names. That matter was discussed at length at that meeting.

Q. Now at that time, Mr. Stover, did you resort to some outside medium for information other than what I had told you and what you had there in the room? A. Well, all the directors had a contribution to make after we studied the matter. Incidentally, one of them had a dictionary, an American College Dictionary, and he read the dictionary definition. That, in a layman's language, seemed to clear things up better than anything else.

Mr. Miller: We move to strike this last answer for all the reasons urged in the standing objection, and particularly for the reason that it does not lie with the defendant at this time to impeach the judgment of Judge Harper. Now as I understand it, all of this goes to watering down the language of the injunction, and I take the position that right or wrong, they have got to comply with the injunction as it was written.

The Court: You are exactly right. However, they are trying to put—if they did put an honest interpretation upon it and believed that what they did was not in violation of the injunction, that would be one thing, even though they did violate the injunction.

Mr. Miller: I just wanted to preserve my record.

The Court: Exactly.

Q. Was the dictionary brought in? A. Yes.

Q. Was the definition of trade mark read? A. Yes.

Q. And you have with you a copy of what was read there at that time? A. Yes.

Q. Will you produce it please?

(Witness produced document which was marked Defendants' Exhibit "H" for identification.)

Q. Will you please examine this set of papers which the court reporter has marked for identification as Exhibit "H" and tell us what it is, if you know? A. That is the definition of a trade mark and a trade name as taken from the American College Dictionary.

Q. And who made Exhibit "H", who copied it? A. I did.

Q. And is it truly and correctly copied by you from the American College Dictionary that you have mentioned? A. Yes.

Q. And does Exhibit "H" contain the definitions which were read to the board at your meeting shortly after June 13, 1956? A. Yes.

Q. And you say that you laymen were better able to comprehend and understand the language of the dictionary than what we lawyers told you, is that right? A. Well, that was very clear, at least, to us.

The members of the Iowa Farmers Union own the assets of the defendant, Iowa Farmers Union. The assets of the Iowa Union Farmer Association are owned by the members of that association. There is a separate membership between the Iowa Farmers Union and the Iowa Union Farmer Association. The members of the Iowa Farmers Union pay us $7.50 annual membership. The membership of the Iowa Union Farmer Association pay $10.00 membership. In some cases they overlap. In other words, they are members of the Iowa Farmers Union and are also members of the Association, but not all of them.

The membership in each of the corporate defendants, the Iowa Farmers Union and the Iowa Union Farmer Association are separate and distinct memberships. Each member in those corporations own the assets of which they are members. They have no interest in the other corporation unless they happen to be also members of it. The newspaper publication now known as the U. S. Farm Union News is published by the corporate defendant, Iowa Union Farmer Association.

Q. And with that publication the defendant Iowa Farmers Union has nothing to do? A. That's right.

Mr. Miller: Well, that is objected to as calling for an opinion and conclusion of the witness and incompetent. The record speaks for itself.

The Court: As to whether they have anything to do with that phase of it?

Mr. Miller: Yes, they all get copies of it.

The Court: That is whether they are members—

Mr. Miller: Yes, Your Honor.

Mr. McManus: Well, I move to strike out that statement just made by counsel as not evidentiary.

The Court: What counsel says on both sides is not evidence, of course.

Mr. Miller: He already testified that he sent that to members of the Iowa Farmers Union.

The Court: That is, he sent it to both members.

The Witness: (Interposing) There is a contract, an agreement between the Iowa Farmers Union and the Iowa Union Farmer Association in which one of the stipulations is that a copy will be furnished upon the payment of a certain amount of money per month.

Q. And is that certain amount of money per member a subscription price? A. It is one dollar.

Q. So that paper goes to whoever pays a subscription price, whether they are members of either organization or not, is that correct? Is that a fact, Mr. Stover? All I want is the truth of the facts. A. Yes.

We had that meeting and discussed this matter and read this dictionary definition and went over those papers and thereafter changed the name of the newspaper. We changed the name from Iowa Union Farmer to U. S. Farm Union News. Counsel advised us that it might be better to change the name of the newspaper and the board agreed that we better change it in order to make doubly certain that we wouldn't be confused—there would be no question about confusing our publication with any other publication. We also wanted to avoid violating the decree. We had used the name Iowa Union Farmer Association since the summer of 1952.

Q. Now had you ever at any time in any of your publications imitated or attempted to reproduce the same dis-

tinctive type or style or print used in the registered mark to which your attention has been called in any of your publications? A. No, we have not.

Mr. Miller: That is objected to for all the reasons heretofore urged. It doesn't lie in the hands of these defendants to impeach the decree of Judge Harper.

The Court: Well, I believe that is correct. However, the first part of the question probably calls for a conclusion of the witness, but he can tell what he did in respect of imitating what had gone before.

Q. Well, in compliance with the suggestion of the court, have you ever at any time attempted to imitate the trade mark of the plaintiff?

Mr. Miller: Same objection.

A. No, we have not.

Q. Now does the Iowa Farmers Union or the Iowa Union Farmer Association sell or produce or manufacture or deal in any commodity or thing or article of commerce? A. None whatever.

Q. And so you have never used any trade mark attached or affixed to any merchandise or commodity or products at any time, is that true? A. No, we haven't.

Mr. Miller: That is objected to as calling for an opinion and conclusion of the witness. The newspaper is certainly a commodity and they have certainly attached their name to that and we don't know just what their opinion is as to what else might come as a commodity.

Q. Aside from your newspaper publications of Iowa Union Farmer Association, have you issued or published or dealt in or produced any other commodity or merchandise? A. Nothing that we would call a commodity or merchandise. We did mail out a small circular.

Q. That is you mailed out literature and other matters containing the name Iowa Union Farmer? A. No.

Q. Containing what name? A. U. S. F. U. News, with my name as editor.

Q. Oh, U. S. Farm Union News. All right. Now, aside from these publications and this literature, have you affixed or attached the name Union Farmer or Farmers

Union to anything else except publications? A. No, we haven't.

Q. And you have never bought, sold, traded or dealt in any other type of merchandise at any time, is that correct? A. We have not, that's right.

To my personal knowledge from time to time since March, 1954, there have appeared in newspapers of general circulation in Iowa articles dealing with the fact that there was no longer any connection or affiliation between the Iowa Farmers Union and the National Farmers Union, hundreds of them. From time to time there have also been radio broadcasts in Iowa concerning the same subject and in addition to that I think there have been some TV programs broadcast dealing with that subject.

Q. Now by means of the daily press, radio broadcasts, TV broadcasts, would some of these mediums of communication be likely or probably to reach all of your membership from time to time?

Mr. Miller: Now that is objected to for the reason that it is trying to impeach the decree of Judge Harper. Judge Harper found that there was confusion and that they were in competition with us, and I cannot see how this testimony has any bearing on any issue except to try to impeach that decree, and I insist that it isn't proper.

The Court: Insofar as it may undertake to do that, of course, it would be improper.

Mr. McManus: We recognize that, Your Honor. We are not trying to do that.

Q. Do these radio broadcasting stations in Des Moines extend to and reach to all boundaries in Iowa, if you know? A. I think they do.

Q. And do you have any idea or opinion with respect to the circulation of the Des Moines newspaper known as the Des Moines Register and the Des Moines Tribune? A. I think they have a circulation of nearly a half-million of the Sunday Register and I forget what the daily Register and Tribune circulation is but it is considerable.

Q. How old are you? A. 58.

Q. Now have you ever at any time had or entertained any intention to disobey or violate the decree of Judge

Harper in this case which was made and entered of record June 13, 1956?

Mr. Miller: Same objection as heretofore urged to the line of testimony.

The Court: Very well. The same ruling. He may answer.

A. Most certainly not. That was the reason for our board meeting and our long discussion, to make sure that we avoided it.

Q. And did you have that end in mind also in conferring with counsel? A. Yes.

Q. And in your subsequent course of conduct, did you follow and rely upon advice of counsel? A. Entirely.

Q. And the counsel were these three lawyers whose names have been mentioned? A. Yes.

Q. At any time subsequent to the board meeting in the summer of 1956, did you think that the injunction did or did not prohibit the use of the trade name "Iowa Farmers Union"? A. We didn't think it did.

Q. And did you think that it did or did not prohibit the use of the trade name "Iowa Union Farmer Association"? A. We didn't think so.

Mr. McManus: Now in connection with the examination of this witness the defendant offers and introduces into evidence Exhibits "A", "B", "C", "D", "E", "F", "G" and "H" identified in the examination of this witness. Exhibit "H" is offered, your honor, purely as bearing upon the intent and state of mind of the defendant, Fred W. Stover, and not as probative proof of anything except that.

Mr. Miller: We object to the exhibits for all the reasons urged in our objection to this line of testimony, your honor, for which I understand we have had a standing objection.

The Court: Yes, that is correct. They are received subject to the objections. I will receive them subject to the objections.

Cross Examination.

By Frederic M. Miller:

Our name Iowa Farmers Union had ~~been~~ adopted by the corporation at the time of the trial of the case here before Judge Harper, on advice of counsel.

Q. Well, have you changed the method of operating the Iowa Farmers Union in any way since the decree was entered? A. I am not sure what you mean.

Q. Well, you were operating the same since the decree as you did before, are you not? A. Perhaps so.

Q. You don't know of any difference? A. What is your question?

Mr. Miller: Will you read the question to him?

(The pending question was read back to the witness.)

A. Not particularly.

Q. And as far as the Iowa Union Farmer Association is concerned, you changed the name of the publication to U. S. Farm Union News, but did you make any other change in your method of operating that association? A. I don't think so.

I have been here in the trial of this case this morning and this afternoon. It has been stipulated that I have written the editorials in this U. S. Farm Union News. That is correct. Page 2 of Exhibit 2 does not contain an editorial. That was prepared at our board meeting. I had something to do with it, certainly, but it was not an editorial. It is published under my direction. I took it to the printer. The heading says "Message from your State Board", and it is signed by IFU Board. I agreed with it. I probably furnished some of the information from which it was prepared, got it from various sources.

Q. Well, for instance this paragraph here—"Here is an explanation of what happened. Shortly after the suit was started, the lawyers met for a pretrial conference with Judge William Riley, who is the judge for the U. S. Southern District of Iowa. Our attorneys agreed not to use the trade mark and symbols, not to use the name 'Farmers Educational and Cooperation Union of America, Iowa Division,' and not to claim that we represented the N. F. U. Thereupon, Judge Riley commented that if that were done

there probably wouldn't be any trial, it would be a moot case. This apparently did not satisfy the N. F. U. officials, who quite obviously wanted us put clear out of business, but there the whole thing hung until February of this year when the case was finally docketed. Unfortunately at that time Judge Riley was ill in the hospital. Judge Roy Harper, of Missouri, a Truman appointee and a friend of Charlie Brannon, was assigned to hear the case. He knew nothing about the case before, about the pretrial conference and discussion that had been held before Judge Riley. It seems that he paid no attention to our answer, our briefs in argument, and the testimony. His excuse seemed to be that we conceded the legality of the charter revocation, and therefore, all the long record of N. F. U. affairs had no bearing." You knew about that, did you not? A. I certainly did.

Q. And you subscribed to it, did you not? A. I did.

Q. You furnished the information from which that was written, didn't you? A. That information was taken from the briefs and from the discussion of the board.

Q. Which you agreed with? A. And from the report of Mr. Cosson in the pretrial conference.

Q. And you were in charge of the publication of this issue, were you not? A. Yes.

Q. Now I call your attention to page 4 of what the reporter has marked Exhibit 5. Is that the editorial page of that paper? A. Yes.

Q. So that this article is an editorial on organizational durability? A. That's correct.

Q. And this paragraph: "The fraternal organization now past forth is not going to fold up in spite of all the injunction suits that Patton and his chore boys in Iowa are using to arrest and retard the organization." You wrote that, did you not? A. I did.

I supervised the publication of Exhibit 9. In the first complete paragraph in the lefthand column on the last page of the circular where it says "Members of the Iowa Farmers Union are of course automatically paid subscribers to the U. S. F. U. News" means that the Farm Union News goes to the members of the Iowa Farmers Union by virtue of

the contract and agreement between the two boards. I used the word "automatic". I still stand by it.

Re-Direct Examination.

By J. R. McManus:

Q. Counsel called your attention to an article in Exhibit 2, being the May-June issue of the Iowa Farm Union News, and read to you a paragraph at the bottom of page 2 of this publication which commenced with the sentence, "Here is an explanation of what happened," and which ended with the sentence, "His excuse seemed to be that we condoned the legality of the charter revocation. Therefore, all the long record of N. F. U. interference in I. F. U. affairs had no bearing," did he not? A. Yes.

Q. Now in that statement there is set forth in the bottom paragraph in the first column on the lefthand side of page 2 of Exhibit 2 and at the top of the next column this matter you told us about this morning that had been reported to you by Mr. Cosson as a result of a pretrial conference. A. Uh Huh.

Q. Now then, you say following that "Unfortunately, at that time Judge Riley was ill in the hospital." Now that sentence referred to the time the case was reached for trial, did it not? A. Yes.

Q. And Judge Riley was ill at the time the case was reached for trial, and Judge Roy Harper of Missouri presided. Now, from whom did you get your information that he was a Truman appointee? A. From Mr. Cosson.

Q. And from whom did you get the information that he was a friend of Charlie Brannon? A. From Mr. Cosson.

Q. And Charlie Brannon is also the Charles F. Brannon who is one of the lawyers in this case? A. Yes.

Q. And in the next sentence you say, "He knew nothing about the case before." You are referring there to Judge Harper? A. Yes.

Q. And so far as you knew that was true, was it not? A. That's right.

Q. "About the pretrial conference and the discussions that had been held before Judge Riley." Now all of the

pretrial conference had not been made a part of the record, had it? A. I understand not

Q. So, so far as you knew, when you made that statement it was true, wasn't it? A. Yes.

Q. The next sentence, "It seems that he paid no attention to our answer or briefs and argument or testimony." In that sentence were you giving expression to your own honest beliefs and opinion? A. Well, I think that came out of the fact that a lot of our board members wondered why none of the cases cited in our briefs were mentioned.

Q. In the judge's opinion, you mean? A. In the opinion.

Q. But in any event, aside from that were you giving expression to your own honest opinion and the honest opinion of the board that it seemed that the judge didn't pay any attention to your briefs and answer, argument, or testimony?

Mr. Miller: That is objected to as leading and suggestive.

Mr. McManus: Well, perhaps it is. I withdraw it if that objection is made.

Q. What was the purpose and intent of making the statement I just read? A. Well, actually the whole—most of that was rather instead of taking what the application called a contumacious attitude, it was trying to explain perhaps why Harper made the decision. If he had been in the case beforehand in place of Riley, why he would have had the full knowledge of everything, and I would think it was in Harper's favor rather than against him, because we were trying to explain perhaps why he so ruled.

Q. In other words, you were trying to explain his unfamiliarity with the case, and that is your explanation of that language? A. (Witness nods head.)

Q. Did you rely on the statement of Mr. Cosson with respect to Judge Harper's appointment by President Truman and Harper's acquaintance with Brannon? A. Yes.

Q. Now in connection with that publication that counsel referred to did you or the board have any intention to defy

or violate the decree of the court in this case? A. Most certainly not.

Q. On the contrary, were you trying to explain to your membership some reason or basis for the opinion? A. That's right.

MRS. EDNA UNTIEDT,

called as a witness in behalf of the defendant Stover, being first duly sworn, testified as follows:

Direct Examination.

By J. R. McManus:

My name is Mrs. Edna Untiedt. I live in Dixon, Iowa. My husband is a farmer. I am a housewife. I live on a farm. I am a junior leader of the defendant Iowa Farmers Union. I am a member of the defendant Iowa Union Farmer Association. I pay my dues, my $10.00 dues. In 1955 and 1956 I was not a member of the board of directors of either or those organizations but I was a member of each organization. I recall hearing the testimony given here today by Mr. Stover with respect to a board meeting held here in Des Moines in the spring of 1955 at which time there was discussion with respect to the change of name of the defendant Farmers Educational and Cooperative Union of America, Iowa Division, to Iowa Farmers Union. I attended that meeting. Mr. Cosson was there. He addressed the meeting. The board was there.

Q. And what did Mr. Cosson tell you at that time and place?

Mr. Miller: Now, your honor, may I have a standing objection to this line of testimony the same as heretofore posed to this line?

The Court: Yes, you may. I will receive it subject to that objection.

A. Mr. Cosson mentioned the fact that they had a pretrial conference held in the U. S. District Court before Judge William Riley. He told us that Mr. Riley had said that if we would change the name from Farmers Educa-

tional and Cooperative Union of Ameria and just use the words "Iowa Farmers Union" that we would need not—there probably would be no trial; it would be a moot case.

I think he told us that we had to do something else in addition to changing the name. He said that if we would claim that we were no longer affiliated with the National Organization and would carry that out over the state and not to use any affiliation with the National Farmers Union in our membership drives or anything to say we were affiliated with them. He asked us to refrain from speaking or being represented with the National Farmers Union. Following and as a result of that meeting the corporate name was changed to Iowa Farmers Union. Under our charter and by-laws our annual meeting was held in September, 1955. At that time we accomplished a change in the name. That was an attempt to comply with the suggestion made by Judge Riley, as reported by Mr. Cosson. It couldn't be done before. The next matter that came up with respect to the change of name was the change of name to U. S. Farm Union News. I attended that meeting. I think it was discussed. That was in the summer of 1956 following the decree. I attended the board of directors meeting, not the association meeting. At that board of directors meeting in the summer of 1956 that has been described by Mr. Stover in his testimony and detailed here, I was in attendance at the Farmers Union board of directors meeting. It started at 10 o'clock in the morning and lasted late in the evening. I recall Mr. Stover being there and presenting to that meeting the material that he mentiond here today.

Q. And do you recall him reciting to the board the legal opinion to which I had given expression with respect to the use and distinction between trade marks and trade names? A. I do.

Mr. Miller: Your honor, I object to this as purely cumulative.

The Court: Yes, it is cumulative.

Mr. Miller: In a matter that we are not going to dispute at all except as to its relevancy.

Mr. McManus: Well, in view of that statement there is no use in me pursuing this line of examination any further. I simply wanted to—

The Court: Corroboration I don't think is necessary.

Mr. McManus: Yes. Very well, your honor. In view of what your honor has said and the concession of counsel, I don't think that it is essential that I pursue this matter further, but there is one matter that hasn't been covered that I was going to ask about.

Q. Do you recall talking to James D. Patton, president of the National Farmers Union at Denver, Colorado in a hotel there in March, '54?

A. Yes, at the Shirley Savoy Hotel.

Mr. Miller: This is objected to as a collateral matter prior to the entry of the decree. This was in 1954, two years before the decree.

The Court: Unless it leads up to something—

Mr. McManus: I think it is, your honor. It is preliminary. It won't take very long.

The Court: On your suggestion that it will lead up to something.

Q. Do you recall what that conversation was? A. Yes.

Mr. Miller: Same objection.

A. It was the Monday following the National board meeting, and in the afternoon. I talked to Mr. James Patton in the lobby of the Shirley Savoy. I told Mr. Patton —I said, although they had taken steps to try to revoke our charter, I was going home and I was going to organize the Iowa Farmers Union. Mr. Patton patted me on the back and he said, "Go ahead, Mrs. Untiedt." He said, "That is wonderful. Go ahead." I says, "Mr. Patton, I am not organizing for the National Farmers Union, I am organizing for the Iowa Farmers Union." He said, "That is just fine, Mrs. Untiedt." He said, "Go right ahead and organize for the Iowa Farmers Union." So thereby I was given permission from Mr. Patton at that time to organize for the Iowa Farmers Union.

Mr. Miller: We move to strike all that testimony as obviously an attempt to impeach the decree that Judge Harper issued.

The Court: Of course it is a thing they could not do.

Mr. McManus: We don't undertake to do that, your honor.

Q. And at that time of the conversation that you have just related was James D. Patton president of the Plaintiff? A. He was.

Mr. McManus: That's all.

Mr. Miller: No cross examination.

(Witness excused.)

Mr. Miller: At this time as a part of the cross examination of Mr. Siover, we offer in evidence Exhibit 9.

Mr. McManus: No objection on our part to the admission of Exhibit 9.

The Court: Very well.

Mr. McManus: The defendant rests, your honor.

Mr. Miller: No rebuttal, your honor.

Mr. McManus: Then at this time if it would be proper, I would like to make a motion if I may, your honor.

The Court: Very well.

Mr. McManus: The defendant now moves to dismiss this proceeding for the reason that there is no competent proof of wilfulness or of any intent upon the part of the defendant who stands charged of disobeying or violating the decree entered on June 13, 1956.

Second, this is a civil contempt proceeding, deemed to be for the benefit of the plaintiff, and there is no proof of damages and in the absence of such proof any award would be based on conjecture and speculation and would be without any factual basis in this record, and without support in the evidence. So that there is no proof of damages before the court which would constitute or form any basis for the entry of any judgment in favor of this plaintiff.

Three, the plaintiff has failed to make out a case or meet the burden of proof, or establish by a preponderance of the evidence the essential allegations of his application; and there is no proof which would warrant the court under this evidence and this record of finding the defendant guilty of the accusations made in the application for citation for contempt.

For each and all of these reasons the defendant moves the court to make an order finding that the defendant is innocent of the accusations made in the application, and that he has purged himself of the charge of contempt, and that the application of the pl ntiff as amended be dismissed.

The Court: That will be taken with the case. I think on the question of damages, in civil contempt the court would have a right to impose such penalties as would compel a compliance with the decree, or to in some cases even put one who has been cited in jail until he will comply with the order of court.

Mr. McManus: There are authorities on the question that I have brought to your attention.

The Court: Yes, I know.

(Colloquy regarding submission of briefs.)

(Case finished—court adjourned.)

(Memorandum Opinion on Question of Contempt and Citation Against Fred W. Stover.)

(Filed in United States District Court on March 28, 1957.)

On June 11, 1956, Judge Roy W. Harper, the trial judge in the above case, entered his decree, in part as follows:

"* * * that the defendants, Iowa Farmers Union (formerly Farmers Educational and Cooperative Union of America, Iowa Division), Iowa Union Farmer Association, Fred W. Stover * * * and each of them, be and they are permanently enjoined from making any use whatever, directly or indirectly, of plaintiff's collective mark, 'Union Farmer', in connection with the printing publication and distribution of any newspaper or like periodical, and from making any use whatever, either directly or indirectly, of plaintiff's service marks to-wit: the words, 'Farmers Union,' * * * in connection with dissemination of information pertaining to farming and related industries, and particularly information in connection with cooperatives to aid the farmer in marketing his produce, information relating to educational and entertainment pro-

grams, for farmers and their families, * * * the sale of insurance, and the servicing of farm equipment, and from in any way, directly or indirectly, attempting to compete with the plaintiff in its use of said trade marks."

On September 10, 1956, the plaintiff applied for a contempt citation against Fred W. Stover "for willful violation of the injunction issued as a part of the final decree in this cause * * *."

It was then charged that, subsequent to the entry of the decree the said Fred W. Stover, in his capacity as president of the Iowa Union Farmer Association, solicited contributions for the Iowa Union Farmer Association and that, at the same time, he published various articles which demonstrated a willful and deliberate defiance of the court's decree. Other averments of the application were designed to show an intention on the part of the respondent to disregard and disobey the injunctive relief granted by Judge Harper.

On December 10, 1956, the plaintiff filed an amended application for a contempt citation and made this additional charge:

"That the publication and distribution of a newspaper entitled U. S. Farm Union News (formerly Iowa Union Farmer), * * * was denominated the May-June 1956 issue of said newspaper * * *."

And, further, that the said respondent, in his capacity as president of the Iowa Union Farmer Association supervised the publication and distribution of said newspaper and subsequent issues, and that contributions were solicited for the "Iowa Union Farmer Association" by the respondent.

As said in Jarvaise, etc., v. St. Paul Institute of Cosmetology, 237 N. W. 183, l. c. 185:

"The name of a newspaper is in the nature of a trademark * * * Seabrook v. Grimes, 107 Md. 410. * * *."

In the trial there was practically no controversy as to the actual facts in the case. That the publications were made

as charged by the plaintiff, and that the defendant supervised and controlled such publications was not disputed. In the evidence, as well as in briefs of able counsel for the respondent, the thought was expressed and contention made, that the injunction of Judge Harper did not enjoin the use of a trade-name, and, that, since the plaintiff only enjoyed rights on its registered trade-mark, there was no violation of the court's order.

1. It should be noted that the law of trade-names is identical with that of trade-marks. Trade-names, as such, are not registered. Any rights that may accrue in a trade-name are by reason of the fact that such trade-name becomes, in law, a trade-mark. Trade-names have been frequently confused with trade-marks, and, broadly considered, they do include names which may constitute technical trade-marks. St. Louis Independent Packing Co. v. Houston, 215 F. 553, l. c. 560.

A trade-name is descriptive of the manufacturer or dealer himself and applies to a business and its good will, whereas a trade-mark, in a technical sense, is applicable to vendible commodities. Standard Oil Co. of New Mexico v. Standard Oil Co. of California, 56 F. 2d 973, l. c. 977. Katz Drug Co. v. Katz, 217 F. 286, l. c. 289.

Again, a trade-mark has reference to the thing sold while a trade-name embraces both the thing sold and the individuality of the seller. Eastern Outfitting Co. v. Mantcim, 110 Pac. 23, l. c. 25; 59 Wash. 428.

It has been held, however, that a trade-name is not strictly a trade-mark, but is generally governed as to its use by the same rules as a trade-mark. Jarvaise Academy of Beauty Culture v. St. Paul Institute of Cosmetology, 257 N. W. 183, l. c. 185, 183 Minn. 507.

2. In the case at bar, plaintiff registered its trade-marks "Union Farmer" and "Farmers Union." The evidence tended to show that the public was confused by the use of similar names by the respondent. Moreover, in using the names complained about, the respondent was of the opinion (based upon the advice of an able lawyer) that the injunction was directed against a trade-mark and not against a trade-name. Apparently the respondent believed that he

had a right to use the names covered by plaintiff's registered trade-marks.

3. The court cannot grant the relief sought by plaintiff by ordering the corporate defendant to turn over fees, dues, etc. This could only be done if the proceeding were against the board of directors.

4. That the respondent violated the injunction, there can be no reasonable doubt or question and it would follow that the court must find him guilty of contempt and subject to penalty. It should be the order of the court that, if, within ten days after the date of the filing of the order herein, the respondent changes the wording of his publication so as to eliminate, among other things, the words, "(Formerly Iowa Union Farmer)" and causes to be removed a similar sign over a place of business conducted by him for his organization, and ceases soliciting contributions as alleged and proved, and otherwise complies with the injunctive order, then a fine of $1000.00 will be reduced to $500.00.

Counsel for plaintiff will prepare and submit an appropriate order, together with proposed findings of fact and conclusions of law.

Kansas City, Missouri, March 28, 1957.

s/ Albert L. Reeves,
U. S. District Judge.
(By assignment.)

(Findings of Fact, Conclusions of Law, Judgment and Decree.)

(Filed in United States District Court on April 25, 1957.)

Be It Remembered that on the 28th day of January, 1957, this cause came on in its regular order for trial on the Citation of the defendant Fred W. Stover to show cause why he should not be adjudged in Contempt of Court and his Response thereto, the plaintiff appearing by Frederic M. Miller and Sherwin J. Markman of the

firm of Brody, Parker, Miller, Roberts & Thoma, of Des Moines, Iowa, and by Charles F. Brannan of Denver, Colorado, its attorneys of record, and the defendant, Fred W. Stover, appearing by James R. McManus of Des Moines, Iowa, his attorney of record, and the Court having listened to the testimony and the arguments of counsel and having examined the documents introduced in evidence and the written briefs submitted by counsel and being duly advised in the premises, now, in conformity to the Rules of Civil Procedure, the Court makes its Findings of Fact and Conclusions of Law and enters its Order for Judgment and Decree as follows:

Findings of Fact.

1. On June 11, 1956, Judge Roy W. Harper, the trial judge in the above case, entered his decree, in part as follows:

"* * that the defendants, Iowa Farmers Union (formerly Farmers Educational and Co-Operative Union of America, Iowa Division), Iowa Union Farmer Association, Fred W. Stover * * and each of them, be and they are permanently enjoined from making any use whatever, directly or indirectly, of plaintiff's collective mark, 'Union Farmer', in connection with the printing, publication and distribution of any newspaper or like periodical, and from making any use whatever, either directly or indirectly, of plaintiff's service marks to-wit: the words, 'Farmers Union,' * * * in connection with dissemination of information pertaining to farming and related industries, and particularly information in connection with cooperatives to aid the farmer in marketing his produce, information relating to educational and entertainment programs for farmers and their families, * * * the sale of insurance, and the servicing of farm equipment, and from in any way, directly or indirectly attempting to compete with the plaintiff in its use of said trade marks."

2. As the basis for such decree Judge Harper made certain Findings of Fact and Conclusions of Law which included the following:

(a) Defendants admit that they are using the marks, namely, "Union Farmer" and "Farmers Union," and asserted that they intend to continue to use said marks unless restrained from so doing.

(b) The evidence is undisputed that the use by the defendants of the marks, "Union Farmer" and "Farmers Union" is in direct competition with the plaintiff.

(c) Plaintiff's collective mark for goods, "Union Farmer," usually used for newspapers published by plaintiff and its divisional organizations, was registered in the Principal Register of the Patent Office on November 2, 1954; and plaintiff's service mark, "Farmers Union", was registered in the Principal Register of the Patent Office on April 1, 1952.

(d) The use by the defendants of the marks, "Union Farmer" and "Farmers Union" is in direct competition with the plaintiff. The types of service offered and the names used are so similar that there is bound to be confusion. The evidence shows that confusion has occurred and demonstrates that confusion will reoccur. Defendants' activities adversely and seriously affect plaintiff's national organization and its nationwide program.

(e) Defendants are infringing plaintiff's said registered marks in such a manner that confusion has resulted and is bound to reoccur in the future unless injunctive relief, prayed for by the plaintiff, is granted by this Court.

(f) Plaintiff is entitled to a permanent injunction, enjoining the defendants, both corporate and individual, from the use of plaintiff's service mark, "Farmers Union", plaintiff's collective mark, "Union Farmer", and plaintiff's service mark, the aforesaid symbol of a plow, a rake and a hoe surrounded by a circle.

3. Defendant, Fred W. Stover, is the President and principal managing officer of the Iowa Farmers Union and the Iowa Union Farmer Association. He publishes and is an editorial contributor to the newspaper now known as "U. S. Farm Union News" formerly known as "Iowa Union Farmer". He is in charge of the activities of said

Iowa Farmers Union and said Iowa Union Farmer Association, including the solicitation of subscriptions, memberships, dues and contributions and is in charge of the records and headquarters of said corporations. Not only is he bound to comply with the injunction, quoted in Paragraph 1 hereof, supra, but is under the duty to so supervise and direct the affairs of said corporations that they likewise in their activities would obey said injunction.

4. The continued use of the names, "Iowa Farmers Union" and "Iowa Union Farmer Association", by said corporations, and in particular by the defendant, Fred W. Stover, has created confusion and misunderstanding in the community and directly violates the injunction. The name, "U. S. Farm Union News", is so similar to "Iowa Union Farmer" that it is deceptive and confusing and creates confusion and misunderstanding among the farm people of Iowa.

5. Except for the change of the name of the newspaper from "Iowa Union Farmer" to "U. S. Farm Union News", defendant, Fred W. Stover, as President of defendants, Iowa Farmers Union and Iowa Union Farmer Ass'n., has conducted the affairs of both of said corporations since the entry of said decree the same as he did prior thereto. There can be no reasonable doubt or question that defendant, Fred W. Stover, violated the injunction herein. He is guilty of contempt and is subject to penalty therefor.

Conclusions of Law:

1. As above stated, Judge Harper found that defendants were infringing plaintiff's registered marks and enjoined them from further infringement thereof. Except for the change of the name of the defendants' newspaper from "Iowa Union Farmer" to "U. S. Farm Union News", defendants, including and under supervision of the defendant, Fred W. Stover, have continued their operations since the entry of the injunction the same as they had prior thereto. There has been no substantial effort to comply with the injunction. Obviously, defendant, Fred W.

Stover, continued to do that which he was enjoined from doing. He is guilty of contempt and is subject to penalty.

2. The name of a newspaper is in the nature of a trade mark. The law of trade names is identical with that of trade marks. Rights that may accrue in a trade name are by reason of the fact that such trade name becomes in law a trade mark. While a trade name is now strictly a trade mark, it is generally governed as to its use by the same rules as a trade mark.

3. Plaintiff has registered its marks, "Union Farmer" and "Farmers Union". Judge Harper's findings and conclusions adjudicated that defendants' use of the trade name, "Iowa Farmers Union", infringed plaintiff's registered mark, "Farmers Union" and that defendants' use of the trade name "Iowa Union Farmer Association" infringed plaintiff's registered mark "Union Farmer". The adjudications thus made are not subject to collateral attack in these proceedings. Defendant, Fred W. Stover, President of the Iowa Farmers Union, and as president of the Iowa Union Farmer Association, has done nothing whatever to terminate said infringements by said corporations. He is clearly guilty of contempt. In continuing to supervise and direct the activities of said corporations, defendant, Fred W. Stover, has clearly violated the injunction.

4. The change of the name of the newspaper from "Iowa Union Farmer" to "U. S. Farm Union News" does not avoid infringement of plaintiff's registered marks. The confusion which has existed heretofore is bound to continue and to reoccur because of the similarity of the name to plaintiff's marks, particularly when the type of subscribers to defendants' newspaper and to plaintiff's newspapers is considered.

5. Defendant, Fred W. Stover, should pay to the Clerk of this Court a fine of One Thousand Dollars ($1,000.00); provided, however, that, if, within ten days after the entry of judgment herein, he procures the discontinuance of the corporate names, Iowa Farmers Union and Iowa Union Farmer Association, procures the discontinuance of the

name, U. S. Farm Union News, and of the reference to the fact that it was formerly Iowa Union Farmer, procures the removal of the sign, "Iowa Farmers Union", over the entrance to the place of business of said corporation, ceases to solicit funds, contributions and dues for either an Iowa Farmers Union or an Iowa Union Farmer Association, and otherwise complies with the injunction herein, then said fine shall be reduced to Five Hundred Dollars ($500.00).

Order for Judgment.

Pursuant to the foregoing,

It Is Ordered that the Clerk of this Court enter of record herein the following:

Judgment and Decree.

Be It Remembered that on this ____ day of April, 1957, this cause came on for the entry of Judgment and Decree pursuant to the Findings of Fact and Conclusions of Law, filed herein this date, which Findings of Fact and Conclusions of Law are incorporated herein by reference as fully as though repeated at length herein, and, in accordance therewith,

It Is Hereby Ordered, Adjudged and Decreed that the defendant, Fred W. Stover, is found to be in Contempt of Court for violation of the injunction entered in this cause on June 11, 1956, and accordingly is Ordered to forthwith pay to the Clerk of this Court a fine of One Thousand Dollars ($1,000.00), provided, however, that, if, within ten days after the entry of this judgment herein, he procures the discontinuance of the corporate names, Iowa Farmers Union and Iowa Union Farmer Association, procures the discontinuance of the name, U. S. Farm Union News, and of the reference to the fact that it was formerly Iowa Union Farmer, procures the removal of the sign, "Iowa Farmers Union", over the entrance to the place of business of said corporation, ceases to solicit funds, contributions and dues for either an Iowa Farmers Union or an Iowa Union Farmer Association, and otherwise complies with

the injunction herein, then said fine shall be reduced to Five Hundred Dollars ($500.00).

It Is Further Ordered that Judgment be entered against the defendant, Fred W. Stover, for the costs of this proceeding.

(Memorandum Opinion on Objections to Findings of Fact, Conclusions of Law, and Judgment in Above Case.)

(Filed in United States District Court on April 25, 1957.)

The contemnor, through his counsel, makes sundry objections to the proposed findings of fact and conclusions of law, and judgment in the above case.

An examination of the proposed findings and conclusions of law, as well as the judgment, shows that the memorandum opinion heretofore filed was followed.

Able counsel for the contemnor challenges the right of the court to impose a fine in what he designates or claims to be purely a civil contempt. Because of decisions of the Supreme Court on the subject of contempt, and because of the efforts of the Congress to legislate so as to restrain violations of the criminal law, the Congress enacted Sections 401 and 402, Title 18 U. S. C. A. These sections were placed in the statutes enumerating and providing punishments for crimes. It was specifically provided in Section 401 among other things, that:

> "A Court of the United States shall have power to punish by fine or imprisonment, at its discretion, (emphasis mine) such contempt of its authority, and none other, as—
>
> * * *
>
> (3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command."

Quite clearly, the contemnor in this case was charged with disobedience to a lawful decree heretofore entered in a proceeding in which the contemnor was a party.

It has been said that the nature of the relief sought determines whether a contempt proceeding is civil or criminal. Penfield Co. of Cal. v. Securities and Exchange Commission, 330 U. S. 585.

The courts have been greatly confused in endeavoring to distinguish between civil and criminal contempt. There are many cases so purely civil in their nature as to take away any admixture of criminal contempt. This is not such a case. Moreover, the Congress, by the above enactment, endeavored to clarify the question.

In view of the above, the objections to the entry of judgment, and the making of findings of fact and statement of conclusions of law, as requested by the plaintiff, will be overruled.

Kansas City, Missouri, April 23, 1957

s/ Albert L. Reeves,

U. S. District Judge.

Order Overruling Objection to Findings of Fact, Conclusions of Law and Judgment.

Filed in United States District Court on April 25, 1957.

The objections of the contemnor, through his attorney, to the findings of fact, conclusions of law and judgment, as proposed by plaintiff, having been examined, and it appearing that such findings of fact, conclusions of law and judgment accord with the pleadings and the evidence,

It Is Therefore Ordered and Adjudged that said objections be and the same hereby are overruled.

Kansas City, Missouri, April 23, 1957

Albert L. Reeves,

U. S. District Judge,

(By assignment.)

(Notice of Appeal.)

(Filed in United States District Court on May 4, 1957.)

Notice is hereby given that the defendant, Fred W. Stover, hereby appeals to the United States Court of Appeals for the Eighth Circuit from the final judgment entered in this action in a contempt proceeding against said defendant on April 25, 1957.

/s/ J. R. McManus,
417 Fleming Building,
Des Moines, Iowa,
Attorney for Defendant-Appellant, Fred W. Stover.

(Supersedeas Bond.)

(Filed in United States District Court on May 6, 1957.)

Know All Men by These Presents, that I, Fred W. Stover, as principal, am held and firmly bound unto Farmers' Educational and Co-operative Union of America, a corporation, plaintiff in the above entitled cause, and the United States of America in the full and just sum of Twelve Hundred Fifty Dollars ($1250), to be paid to the said Farmers' Educational and Co-operative Union of America, a corporation, and the United States of America, their successors and assigns; to which payment, well and truly to be made, I bind myself, my heirs, executors and administrator by these presents, and I am depositing herewith the sum of Twelve Hundred Fifty Dollars ($1250) as surety for the fulfillment of this obligation with the Clerk of the United States District Court for the Southern District of Iowa at the time of the filing of this bond.

Whereas, on the 25th day of April, 1957, in an action pending in the United States District Court for the Southern District of Iowa between Farmers' Educational and Co-operative Union of America, a corporation, plaintiff, vs. Iowa Farmers Union et al., defendants, Findings of Fact,

Conclusions of Law, Judgment and Decree was filed and entered of record in a contempt proceeding brought by plaintiff against the defendant, Fred W. Stover, finding the said defendant guilty of contempt for the violation of the decree which was entered in the principal cause on June 11, 1956, and imposing a fine against said defendant, Fred W. Stover, and the said Fred W. Stover having filed a Notice of Appeal from such judgment and decree made April 25, 1957, to the United States Court of Appeals for the Eighth Circuit, said notice being filed on May 4, 1957, in the office of the Clerk of said court;

Now, Therefore, the condition of this obligation is such, that if the said defendant, Fred W. Stover, shall prosecute his appeal to effect and shall satisfy the judgment in full, together with costs, interests and damages for delay, if for any reason the appeal is dismissed or if the judgment is affirmed or shall satisfy in full such modification of the judgment, and such costs, interests, and damages as the said United States Court of Appeals for the Eighth Circuit may adjudge and award, then this obligation to be void; otherwise, to remain in full force and effect.

In Witness Whereof, I have hereunto set my hand on this 6th day of May, 1957.

/s/ Fred W. Stover,
Defendant

(Order Granting Supersedeas and Approving Bond.)

(Filed in United States District Court on May 6, 1957.)

Upon this 6th day of May, 1957, there was presented to the undersigned a supersedeas bond tendered by Fred W. Stover, defendant in the above entitled cause, in the amount of Twelve Hundred Fifty Dollars ($1250) with cash as surety for the faithful performance of the obligations created by said bond and, at the same time, the said defendant made oral application for stay, pending the appeal of Fred W. Stover, defendant, to the United States

Court of Appeals for the Eighth Circuit from an order adjudging him to be in contempt, said order having been entered in this court on April 25, 1957, and it appearing to the court that the bond is in proper form and amount and with sufficient surety, and that said defendant is entitled to a stay of proceedings,

It Is, Therefore, Ordered that the execution of and any proceedings to enforce the judgment entered herein in the contempt proceedings mentioned on the 25th day of April, 1957, should be and they are hereby stayed, pending the determination of said defendant's appeal from such judgment so entered upon April 25, 1957, and the supersedeas bond tendered and filed by the said Fred W. Stover, which is mentioned above, is hereby approved by the court.

/s/ Henry Graven,
Judge by assignment.

(Designation of Record upon Appeal.)

(Filed in United States District Court September 18, 1957.)

Comes now Fred W. Stover, appellant, pursuant to Rule 8 (b) of the Rules of the United States Court of Appeals for the Eighth Circuit and Rule 75 (a) of the Federal Rules of Civil Procedure and designates the entire record, proceedings, exhibits and evidence in the above entitled proceeding to be contained in the Record on appeal in connection with the appeal, the notice of which was filed herein on May 4, 1957, on behalf of the appellant, Fred W. Stover.

/s/ James R. McManus,
417 Fleming Building,
Des Moines, Iowa,
Attorney for Appellant,
Fred W. Stover.

(The Exhibits.)

The exhibits in this case consist of the Record on the original appeal, photostatic copies of registered trade marks, briefs, letterheads, photographs, newspapers and other printed matter, all of which would be rather bulky and require a good deal of space if included in the printed Record. The Exhibits will be transmitted to the court either under stipulation or order as their reproduction would be difficult and unduly expensive. In one way or another the original exhibits will be transmitted to the clerk of this court. The following constitutes a complete list of said exhibits with exhibit numbers and a brief statement describing the nature of the exhibit.

List of Exhibits.

Plaintiffs'

1. Printed record upon original trial of injunction suit.
2. U. S. Farm Union News (May-June issue—a newspaper).
3. U. S. Farm Union News (a newspaper).
4. U. S. Farm Union News (a newspaper).
5. U. S. Farm Union News (a newspaper).
6. Photograph showing sign reading "Iowa Farmers Union at 517 Keo Way.
7. Stationery letterhead Iowa Farmers Union.
8. Stationery letterhead Iowa Farmers Union.
9. Circular.

Defendants'

A. Memorandum for Trial Brief accompanying filing of original complaint.

B. Copy plaintiffs' brief and argument filed with Judge Harper.

C. April, 1955, issue of Iowa Union Farmer (a newspaper).

E Letterhead of National Farmers Union.

F Issue of National Union Farmer (a newspaper).

G Issue of National Union Farmer (a newspaper).

H Paper containing dictionary definition of words "trade mark" and "trade name".

(List of Relevant Docket Entries Pertinent to This Appeal.)

1956	
September 10	Filed Pltff's Application for Citation for Contempt of Court of Fred W. Stover.
December 10	Filed Pltff's Amendment to Application for Citation for Contempt of Court of Fred W. Stover.
December 10	Filed Order Granting Application to Show Cause. Reeves, J.
1957	
January 3	Filed Order Granting Application to Show Cause, with Mar.'s return of service on Fred W. Stover personally by handing a copy of same to him at 517 Keo Way, Des Moines, Iowa, at 9:45 A.M., on December 26, 1956. Roland A. Walter, U. S. Mar. by /s/ Jack T. Pitt, Deputy.
January 23	Entered evidence for plaintiff concluded; counsel for defendant moves to dismiss; evidence for defendant, Fred W. Stover, concluded; counsel for defendant renews motion to dismiss; counsel for plaintiff given until February 11, 1957, to file brief; counsel for defendant given until February 25, 1957, to file brief; counsel for plaintiff given until March 7, 1957, to file brief; case will be submitted and taken under advisement when all briefs filed. Reeves, J.
February 4	Filed court's copy of transcript of proceedings on contempt citation.

March 11 — Filed Pltff's Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9; and defendant's Exhibits A, B, D, E, F, G, H, I-1 and I-3 (re-contempt hearing held January 28, 1957).

March 28 — Filed Memorandum Opinion on Question of Contempt and Citation Against Fred W. Stover. Reeves, J. Notice to Attys. 3-29-57. (Pltff's Counsel to prepare Order in Compliance therewith).

April 25 — Filed Findings of Fact, Conclusions of Law, Judgment and Decree. Reeves, J. (7 OJ 69) Notice to Attys. 4-25-57.

April 25 — Entered deft. Fred W. Stover found to be in contempt of Court for violation of injunction entered in this cause on June 11, 1956, and ordered to pay fine of $1000.00, provided, however, if within 10 days after entry of this judgment he procures the discontinuance of the corporate names, Iowa Farmers Union and Iowa Union Farmer Association, procures the discontinuance of the name, U. S. Farm Union News, and of reference to the fact that it was formerly Iowa Union Farmer, procures the removal of the sign, "Iowa Farmers Union", over the entrance to the place of business of said corporation, ceases to solicit funds, contributions and dues for either an Iowa Farmers Union or an Iowa Union Farmer Association, and otherwise complies with the injunction herein, then said fine shall be reduced to $500.00; Deft. Fred W. Stover to pay costs of this proceeding. Reeves, J. (7 OJ 69).

April 25 — Filed Memorandum Opinion on Objections to Findings of Fact, Conclusions of Law, and Judgment. Reeves, J. Notice to Attys. 4-25-57.

April 25 — Filed Order Overruling Objections to Findings of Fact, Conclusions of Law and Judgment. Reeves, J. (7 OJ 70) Notice to Attys. 4-25-57.

May 4	Filed Fred W. Stover, Deft-Appellant, Notice of Appeal. Des Moines, Iowa, May 4, 1957. Copy of Notice of Appeal mailed to Brody, Parker, Miller, Roberts & Thoma, 400 Empire Building, Des Moines, Iowa, and Charles E. Brannan, Equitable Building, Denver, Colorado, Attys. for Pltff. E. E. Poston, Clerk, by /s/ Esther Lyons, Deputy Clerk.
May 6	Filed Order Granting Supersedeas and Approving Bond. Graven, J. (7 OJ 84) Notice to Attys. 5-8-57.
May 6	Filed Supersedeas Bond—Fred W. Stover, Principal.

No.

Office - Supreme Court, U.S.
FILED
MAY 6
JOHN T. FEY, Clerk

APPELLEE'S SUPPLEMENTAL RECORD

United States Court of Appeals
FOR THE EIGHTH CIRCUIT.

No. 15,833.
CIVIL.

FRED W. STOVER,
Appellant,

vs.

FARMERS' EDUCATIONAL AND COOPERATIVE UNION OF AMERICA, a Corporation,
Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA.

United States Court of Appeals

FOR THE EIGHTH CIRCUIT.

No. 15,833.

CIVIL.

FRED W. STOVER,
Appellant,

vs.

FARMERS' EDUCATIONAL AND COOPERATIVE UNION OF AMERICA, a Corporation,
Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA.

INDEX

Exhibit I-1, Registration of Service Mark, "Farmers Union" 1
Exhibit I-3, Registration of Collective Mark, "Union Farmer" 5
Extracts from Exhibit 1, Record in Injunction Case 6
Extract from Exhibit B, Brief Filed with Judge Harper 25
Extract from Exhibit 2, Issue of U. S. Farm Union News 26
Extracts from Exhibit 5 27
Corrections and Additions to Appellant's Record 28

Appendix—

Opinion of United States Court of Appeals, for the Eighth Circuit, Case No. 15,635 33
Opinion on Consideration of Petition for Rehearing of United States Court of Appeals, for the Eighth Circuit, Case No. 15,635 51

The plaintiff asked that the trial court take judicial notice of the record made before Judge Roy W. Harper upon which the injunction was issued herein (R. 12, 13). Plaintiff accordingly offered in evidence, as Exhibit 1, the printed record which was filed in this Court on appeal from the injunction decree and the same was admitted without objection (R. 12, 13). Plaintiff also offered in evidence all of the exhibits that were introduced at the trial of the injunction case (R. 14). Defendant objected to the exhibits other than exhibits I-1, I-2, and I-3, the Registrations in the Patent Office, which were not objected to (R. 14). There were additional exhibits offered by both sides at the trial. Appellant's Record lists said exhibits by letter or number and briefly describes them but does not set out any exhibit in full (R. 75, 76). Appellee feels that certain parts of the exhibits are so important that they should be set out in detail and for that purpose files its Supplemental Record as follows.

EXHIBIT I-1.

Exhibit I-1, the registration on the Principal Register of the United States Patent Office of plaintiff's service mark, "Farmers Union," is as follows:

No. 557,013

(Seal)

THE UNITED STATES OF AMERICA

To All to Whom These Presents Shall Come:

This is to certify that by the records of the United States Patent Office it appears that Farmers Educational and Cooperative Union of America, of Denver, Colorado, a corporation of Texas, did, on the 20th day of August, 1947, duly file in said Office an application for Registration of a

certain SERVICE MARK shown in the Drawing for the SERVICES specified in the Statement, a copy of which Drawing and Statement, together with the Declaration, is hereby annexed and made a part hereof, and duly complied with the requirements of the law in such case made and provided, and with the regulations prescribed by the Commissioner of Patents.

And, upon due examination, it appearing that the said applicant is entitled to have said Mark registered under the Trade-Mark Act of 1946, the said Mark has been duly registered this day in the United States Patent Office on the

PRINCIPAL REGISTER

to Farmers Educational and Cooperative Union of America, its successors or assigns.

This certificate shall remain in force for Twenty Years unless sooner terminated as provided by law.

In Testimony Whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the City of Washington, this first day of April, in the year of our Lord one thousand nine hundred and fifty-two, and of the independence of the United States the one hundred and seventy-sixth.

s/ John A. Marzall
Commissioner of Patents

(Seal)

Attest: P. Wm. Iselnan
Law Examiner

Registered Apr. 1, 1952 Registration No. 557,013

PRINCIPAL REGISTER

Service Mark

UNITED STATES PATENT OFFICE

Farmers Educational and Cooperative Union of America, Denver, Colo.

Act of 1946

Application August 20, 1947, Serial No. 531,900

FARMERS
UNION

STATEMENT

Farmers Educational and Cooperative Union of America, a corporation duly organized under the laws of the State of Texas, having its national offices and place of business at 1455 Sherman Street, Denver, Colorado, has adopted and is using the service mark shown in the accompanying drawing, for SERVICES COMPRISING THE DISSEMINATION OF INFORMATION PERTAINING TO FARMING AND RELATED INDUSTRIES, AND PARTICULARLY INFORMATION IN CONNECTION WITH COOPERATIVES TO AID THE FARMER IN MARKETING HIS PRODUCE. INFORMATION RELATING TO EDUCATIONAL AND ENTERTAINMENT PROGRAMS FOR FARMERS AND THEIR FAMILIES, INFORMATION AS TO PROPOSED LEGISLATION THAT DIRECTLY OR INDIRECTLY MAY AFFECT THOSE ENGAGED IN FARMING AND RELATED INDUSTRIES AND SERVICES TO AND FOR THE FARMER RELATING TO STORAGE OF PRODUCE, THE MAKING OF MORTGAGE LOANS, THE BROKERAGE OF PRODUCE AND LIVESTOCK, THE SALE OF INSURANCE, AND THE SERVICING OF FARM EQUIPMENT, in Class 102, Insurance and financial, and presents

herewith specimens showing the service mark as actually used in connection with the sale or advertising of such services; the service mark being used as follows by applicant and also its chartered subordinate state and local organizations, together with related organizations and affiliated companies: On buildings and other signs, on publications by applicant or related organizations, on business stationery and forms, on various advertising matter, and on literature and publications of applicant and related organizations, and requests that the same be registered in the United States Patent Office on the Principal Register in accordance with section 2(f) of the act of July 5, 1946.

The service mark was first used on or about the year 1902, the year of incorporation, and first used in the sale or advertising of services and services rendered in commerce among the several States which may lawfully be regulated by Congress on or about the year 1904. Applicant maintains control of the use of the mark by its subordinate organizations and its affiliated companies and related organizations, such control being in respect to the nature and quality of the services in connection with which the mark is used.

The mark is claimed to have become distinctive of applicant's services in commerce which may lawfully be regulated by Congress through substantially exclusive and continuous use thereof as a service mark by applicant in commerce among the several States for the five years next preceding the date of the filing of this application and proof of such distinctiveness under section 2(f) of the act is supplemented by further evidence submitted in this case.

FARMERS EDUCATIONAL AND CO-OPERATIVE UNION OF AMERICA,
By TONY T. DECHANT,
Secretary-Treasurer

EXHIBIT I-3.

Exhibit I-3, the registration on the Principal Register of the United States Patent Office of plaintiff's collective mark, "Union Farmer," is as follows:

No. 597,624

(Seal)

THE UNITED STATES OF AMERICA

To All To Whom These Presents Shall Come:

This is to certify that by the records of the United States Patent Office it appears that Farmers Educational and Cooperative Union of America, of Denver, Colorado, a corporation of Texas, did, on the 25th day of May, 1953, duly file in said Office an application for Registration of a certain COLLECTIVE MARK shown in the Drawing for the GOODS specified in the Statement, a copy of which Drawing and pertinent data from the Statement are hereby annexed and made a part hereof, and duly comply with the requirements of the law in such case made and provided, and with the regulations prescribed by the Commissioner of Patents.

And, upon due examination, it appearing that the said applicant is entitled to have said Mark registered under the Trade-Mark Act of 1946, the said Mark has been duly registered this day in the United States Patent Office on the

PRINCIPAL REGISTER

to Farmers Educational and Cooperative Union of America, its successors or assigns.

This certificate shall remain in force for Twenty Years unless sooner terminated as provided by law.

In Testimony Whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the City of Washington, this second day of November, in the year of our Lord one thousand nine hundred and fifty-four.

and of the independence of the United States the one hundred seventy-ninth.

/s/ Robert C. Watson
Commissioner of Patents

(Seal)

Attest: Karl H. Axline
Attesting Officer

UNITED STATES PATENT OFFICE

597,624

Registered Nov. 2, 1954

PRINCIPAL REGISTER

Collective Mark

(Goods)

Ser. No. 647,607, filed May 25, 1953

UNION FARMER

Farmers Educational and Cooperative Union of America (Texas corporation) 1555 Sherman St. Denver, Colo.

For: NEWSPAPERS PUBLISHED BY APPLICANT AND ITS DIVISIONAL ORGANIZATIONS, in CLASS 38.

First used on or about 1911, and in commerce on or about 1911.

EXTRACTS FROM EXHIBIT 1.

At pages 1 and 2 of Exhibit 1, paragraph 1 of the Complaint in the injunction case is set out as follows:

1. The plaintiff, Farmers' Educational and Co-Operative Union of America, is a non-profit corporation, organized and incorporated under the laws of the State of Texas

in 1902 and continuously since then and at the present time in good standing as such. Plaintiff is authorized to do and is doing business in Iowa as a non-profit foreign corporation and has been so authorized in Iowa from time to time since 1917. Among the purposes for which plaintiff was incorporated and which it seeks to accomplish through its activities in Iowa and in various States of the Union, as expressed in its Articles of Incorporation, Constitution and By-Laws, are: to educate the agricultural classes in scientific farming; to teach the farmers the classification of crops, domestic economy and the process of marketing; to systematize methods of production and distribution; to eliminate gambling in farm products by Boards of Trade, Cotton Exchanges and other speculators; to bring farming up to the standard of other industries and business enterprises; to secure and maintain profitable and uniform prices of cotton, grain, livestock and other products of the farm; to discourage the credit and mortgage system; to assist its members in buying and selling; to strive for harmony and good will among all mankind and brotherly love among its members; to foster and encourage business operations, on the co-operative plan, in the distribution as well as the productive field.

At page 19 of Exhibit 1, Paragraph 2 of said complaint, as amended, is set out as follows:

2. The defendant, Farmers Educational and Co-Operative Union of America, Iowa Division, was originally an unincorporated association, having its situs in the State of Iowa with its principal offices in Des Moines, Iowa, which association was on October 8, 1917, duly issued a charter by plaintiff, pursuant to its Articles of Incorporation, Constitution and By-Laws, whereby it became an integral part of plaintiff in the State of Iowa, and it continued to be such until December, 1924, when said unincorporated association became a corporation, incorporated not for pecuniary profit pursuant to the provisions of Chapter 394 of the Iowa Codes of 1924 to 1939, now Chapter 504, Code of Iowa, 1954, and thereafter said corpora-

tion continued to be an integral part of the plaintiff in the State of Iowa until March 13, 1954, when, pursuant to plaintiff's Constitution and By-Laws aforesaid, the plaintiff's Board of Directors duly revoked said defendant's charter, which action by said Board of Directors was duly ratified, approved and confirmed by plaintiff's Biennial Convention on March 15, 1954. Since said time, said defendant has had no authority whatever to operate or function as an integral part of plaintiff but, notwithstanding said fact, said defendant continues to falsely misrepresent that it is an integral part of plaintiff and illegally makes use of plaintiff's trade names, trade marks and symbols (hereinafter referred to), in such manner as to constitute unfair competition and infringement of registered trade names, trade marks and symbols of plaintiff, and threatens to continue to do so in the future. The defendants, Fred W. Stover, Lee Harthan, Betty Lownes, Elmer Gustafson, LeRoy Martin, Annis Thorson, Paul Roth, Dean Huff, Emil Ronfeldt, Lester Muhlenbruch and Gustav Mohr, are members, officers and directors of said defendant corporation, are all residents and citizens of the State of Iowa, are the parties primarily responsible for said false and fraudulent misrepresentations and unfair competition and infringements by said defendants.

At page 20 of Exhibit 1, Paragraph 4 of said complaint, as amended, is set out as follows:

4. The defendant, Iowa Union Farmer Association is a corporation not for pecuniary profit, organized under Chapter 504, Code of Iowa, 1954, having its principal place of business as such in the State of Iowa with headquarters at Des Moines, Iowa. It was organized by the defendant which is referred to in Paragraph 2, supra, to carry out a cooperative agreement for the publication of a monthly newspaper called the Iowa Union Farmer for all of the members of the two defendants. Since March 15, 1954, said defendant has continued to publish said monthly newspaper and threatens to continue to do so. The publication of said newsaper is conducted in such a manner as

to falsely and fraudulently misrepresent that there is a legal connection between said defendant and the plaintiff, when none exists, and constitutes unfair competition and infringements of plaintiff's trade names, trade marks and symbols. The defendants, Fred W. Stover, Chas. Shearn and George Wharam are members and officers of said defendant and are the parties primarily responsible for said false and fraudulent misrepresentations and unfair competition and infringements by said defendant.

At pages 4 and 5 of Exhibit 1, Paragraph 5 of said complaint is set out as follows:

5. The value of the good will, property and rights of plaintiff which plaintiff seeks to protect from the unfair competition and illegal infringements of defendants herein is far in excess of the sum of Three Thousand Dollars ($3,000.00). The jurisdiction of this Court herein is conferred by Section 1332, Title 28, U.S.C.A., by reason of the fact that there is diversity of citizenship between the parties and the amount in controversy exceeds the sum of $3,000.00, exclusive of interest and costs. Jurisdiction of this Court herein is also conferred by Section 1121, Title 15, U.S.C.A., by reason of the fact that defendants' infringements of plaintiff's registered trade names, trade marks and symbols constitute violations of Section 1114, Title 15, U.S.C.A. Jurisdiction of this Court herein is also conferred by Section 1338, Title 28, U.S.C.A., by reason of the fact that plaintiff's claim for unfair competition is joined with a substantial and related claim under the copyright and trade mark laws.

At page 6 of Exhibit 1, Paragraph 8 of said complaint is set out as follows:

8. On or about August 20, 1947, plaintiff duly filed in the United States Patent Office its application for registration of a certain service mark, to-wit: "Farmers Union"

for services comprising the dissemination of information pertaining to farming and related industries, and particularly information in connection with cooperatives to aid the farmer in marketing his produce, information relating to educational and entertaining programs, for farmers and their families, information as to proposed legislation that directly or indirectly may affect those engaged in farming and related industries, and services to and for the farmer relating to storage of produce, the making of mortgage loans, the brokerage of produce and livestock, and the servicing of farm equipment, and at the time of the filing of said application and at all times mentioned in this complaint, plaintiff was the owner of, and now is the owner of said service mark. On or about April 1, 1952, all of the requirements of the then existing statutes of the United States and rules of practice of the United States Patent Office having been complied with, a certificate of registration of said service mark upon the principal register of said United States Patent Office was duly granted and delivered to plaintiff, under Registration No. 557,013

At page 7 of Exhibit 1, Paragraph 10 of said complaint is set out as follows:

10. On or about May 25, 1953, plaintiff duly filed in the United States Patent Office its application for registration of a certain collective mark, to-wit "Union Farmer", for newspapers published by plaintiff and its divisional, and component organizations, and at the time of the filing of said application, and at all times mentioned in this complaint, plaintiff was the owner of, and now is the owner of said collective mark. On or about November 2, 1954, all of the requirements of the then existing statutes of the United States and rules of practice of the United States Patent Office having been complied with, a certificate of registration of said collective mark upon the principal register of said United States Patent Office was duly granted and delivered to plaintiff, under Registration No. 597,624.

At pages 20 and 21 of Exhibit 1, Paragraph 11 of said complaint, as amended, is set out as follows:

11. The charter which plaintiff granted to the unincorporated association, Farmers Educational and Co-Operative Union of America, Iowa Division, on October 8, 1917, as aforesaid, was similar to the charters issued by plaintiff to its various component unions and conferred upon said association the right to use plaintiff's said name and trade names, trade marks and emblems in soliciting funds and members, in publishing a newspaper, and for indicating to the members of said association and to the general public that said association was a component organization of plaintiff. Said association was in its inception, and the defendant corporation which succeeded to the rights and responsibilities of said unincorporated association and its component organizations and members ever since have remained, subject to the charter, constitution and by-laws of plaintiff, as duly amended from time to time. The defendant corporation, Farmers Educational and Co-Operative Union of America, Iowa Division, and Service Association which was incorporated in December, 1937, as aforesaid, was formed as a component organization and integral part of plaintiff under and by virtue of the charter granted by plaintiff as aforesaid. The defendant, Iowa Union Farmer Association, was likewise organized as a component organization and integral part of plaintiff as aforesaid. The revocation of said charter by plaintiff in March, 1954, as aforesaid, was communicated to defendants, and each of them, on or shortly after March 15, 1954.

At page 8 of Exhibit 1, Paragraph 12 of said complaint is set out as follows:

12. Ever since the revocation of said charter, as aforesaid, the defendants, and each of them, have disregarded the same and have infringed, and continued to use and employ, are now infringing, using and employing, and threaten in the future to infringe, use and employ plaintiff's said names, marks and emblem within the State of Iowa in so-

liciting members and collecting funds from individuals and in making pronouncements upon matters of public attention and concern, all in the name of plaintiff but without authority from plaintiff, and in publishing a newspaper under the name "Iowa Union Farmer", and in disseminating views and policies as the views and policies of plaintiff and its members, and in numerous other ways. The said acts of defendants have deceived, misled and defrauded, and tend to and will in the future, unless prevented, deceive, mislead and defraud inhabitants of the State of Iowa and others.

At pages 9 and 10 of Exhibit 1, it is shown that the prayer of said complaint asked that, upon final hearing on the merits herein, the Court enter a decree permanently enjoining, restraining and preventing the defendants, and each of them, from using, employing, publishing and circulating, in any and every manner whatsoever, in any context and in conjunction with any other words, except in the exercise of the right of free speech and discussion the name of plaintiff or the names and marks, "Farmers Union" and "Union Farmer", or any combination of said names and marks, or the emblem of plaintiff and from soliciting members and membership dues, issuing membership cards, holding meetings and making solicitations or doing any other acts which in any way purport that the defendants, or any of them, are in any way authorized to speak for plaintiff or represent plaintiff or to constitute or act for any component organization or integral part of plaintiff, and that plaintiff have such other and further relief as this Court may deem to be just, equitable and proper, including judgment for its costs.

At page 37 of Exhibit 1, it is shown that the order on the pretrial conference of January 20, 1956, provided as follows:

13. Counsel for the plaintiff have submitted a trial brief.

At page 38 of Exhibit 1, it is shown that said complaint was amended to provide:

Plaintiff states that the trademarks referred to in Paragraphs 8, 9 and 10 hereof are used by the plaintiff in interstate commerce and that the infringement thereof by the defendants has been in interstate commerce.

At pages 40 to 45 of Exhibit 1 is set out Judge Harper's Memorandum Opinion, filed May 26, 1956, and reported in 141 Fed. Supp. 820.

At pages 45 to 51 of Exhibit 1 is set out Judge Harper's findings of fact, conclusions of law and decree, as follows:

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER FOR JUDGMENT AND DECREE.

(Filed June 13, 1956.)

Be It Remembered that on the 21st day of February, 1956, this cause came on in its regular order for trial on the merits, the plaintiff appearing by Frederic M. Miller of the firm of Brody, Parker, Miller, Roberts & Thoma of Des Moines, Iowa, and by Charles F. Brannan of Denver, Colorado, its attorneys of record, and the defendants appearing by George Cosson and Clarence Cosson of Des Moines, Iowa, their attorneys of record, and the Court having listened to the testimony and the arguments of counsel and having examined the documents introduced in evidence and the written briefs submitted by counsel and being duly advised in the premises, now, in conformity to the Rules of Civil Procedure, the Court makes its Findings of Fact and Conclusions of Law and enters its Order for Judgment and Decree, as follows:

Findings of Fact.

1. This action was commenced on February 14, 1955, by the plaintiff, Farmers Educational and Cooperative

Union of America, a Texas corporation duly authorized to transact business in the State of Iowa, against the corporate and individual defendants, above named, to enjoin said defendants from infringement of three of plaintiff's trade marks, all of which are registered on the Principal Register of the United States Patent Office, to-wit: (1) a symbol and service mark, consisting of a plow, a rake and a hoe, surrounded by a circle, (2) a collective mark for goods, consisting of the words, "Union Farmer", used for newspapers published by plaintiff and its divisional organizations, and (3) a service mark, consisting of the words, "Farmers Union", used by plaintiff in the sale and advertisement of services.

2. It was stipulated that the Farmers Educational and Cooperative Union of America, Iowa Division, and Service Association, a corporation, is no longer in existence and was not in existence at the time of the commencement of this action, was not served and is not a party to these proceedings. The defendants, Farmers Educational and Cooperative Union of America, Iowa Division, and the Iowa Union Farmer Association, are both Iowa corporations.

3. Jurisdiction is invoked under the Lanham Act.

4. The defendants conceded at the trial that plaintiff is entitled to the exclusive use of its symbol and service mark, consisting of a plow, a rake and a hoe, surrounded by a circle and asserted that they are not using and will not use said symbol and service mark in the future. Defendants admit that they are using the other marks, namely, "Union Farmer" and "Farmers Union", and asserted that they intend to continue to use said marks unless restrained from so doing.

5. The evidence is undisputed that the use by the defendants of the marks, "Union Farmer" and "Farmers Union" is in direct competition with the plaintiff.

6. The plaintiff, a Texas corporation duly authorized to do business in Iowa, has been operating on a national scale since 1906. Its purposes, as stated in its articles of incorporation, include "to protect its members engaged in

the various branches of the farming industries, in their various pursuits, which in promoting and safeguarding their said interests, is partially educational, fraternal, benevolent and cooperative".

7. In furtherance of its purposes aforesaid, plaintiff publishes and distributes a newspaper, various pamphlets and a Washington Newsletter, examples of which were introduced in evidence. Each of them displayed plaintiff's service mark, "Farmers Union" and most of them displayed, in conjunction therewith, plaintiff's symbol, the plow, rake and hoe surrounded by a circle. The plaintiff's newspaper is published under the name of "National Union Farmer" and has displayed therewith the aforesaid symbol. In 18 of the 29 States in which plaintiff has members it has set up State organizations and of these at least nine publish newspapers that use plaintiff's mark, "Union Farmer". The Kansas division of plaintiff has published its "Kansas Union Farmer" continuously since 1911.

8. The defendant, Farmers Educational and Cooperative Union of America, Iowa Division, was originally an unincorporated association located in Iowa, which, in December, 1924, became a corporation pursuant to the laws of Iowa. On October 8, 1917, this defendant was issued a charter by the plaintiff whereby it became an integral part of the plaintiff in the State of Iowa, continuing to be such until 1954. In March, 1954, plaintiff revoked the charter of its Iowa Division and the legality of such revocation was conceded at the trial by the defendants.

9. On September 24, 1955, subsequent to the filing of the complaint herein, this defendant, by amendment to its articles of incorporation, changed its name to Iowa Farmers Union. This new name is identical with the name by which plaintiff's state organizations are commonly, or colloquially, known, and hence is almost identical with the name by which said corporation was commonly, or colloquially, known before the Iowa charter was revoked by plaintiff in 1954.

10. The defendant, Iowa Union Farmer Association, publishes a newspaper under the name of "Iowa Union

Farmer", whose mark resembles those of plaintiff's state organization newspapers. Prior to the revocation of the charter of the defendant corporation by plaintiff, such publication was authorized by the then legally constituted Iowa Farmers Union and it continues to be so authorized by said organization.

11. Plaintiff's service mark, the symbol, with the plow, the rake and the hoe, surrounded by the circle, was registered in the Principal Register of the Patent Office on November 4, 1952; plaintiff's collective mark for goods, "Union Farmer", usually used for newspapers published by plaintiff and its divisional organizations, was registered in the Principal Register of the Patent Office on November 2, 1954; and plaintiff's service mark, "Farmers Union", was registered in the Principal Register of the Patent Office on April 1, 1952.

12. Defendants' activities in Iowa have affected plaintiff's interstate activities as well as in Iowa and defendants' activities have received some national publicity. The use by the defendants of the marks, "Union Farmer" and "Farmers Union" is in direct competition with the plaintiff. The types of service offered and the names used are so similar that there is bound to be confusion. The evidence shows that confusion has occurred and demonstrates that confusion will reoccur. Defendants' activities adversely and seriously affect plaintiff's national organization and its nationwide program.

13. Defendants failed to produce any evidence that plaintiff's trade marks are invalidly registered. The evidence shows that plaintiff's marks have acquired a secondary meaning and the Patent Office did not err in so determining. The evidence of Iowa corporations using the words, "Farmers" and "Union", demonstrates that all of said corporations, some of whom are licensees of the National Farmers Union, disperse goods and services different from plaintiff so that they are not in competition with plaintiff and their existence is no aid to defendants.

14. Defendants' evidence on its asserted issue of "unclean hands" is not clear. It seems to refer to the rev-

ocation of the charter of the Iowa division because the Iowa division did not see eye to eye with the national organization on political matters. Such actions have no intrinsic connection with the subject matter of this litigation having to do with inter-organizational strife whereas the subject matter of the litigation is trade mark infringement.

The Court makes the following

Conclusions of Law.

1. Plaintiff's registration of its three marks aforesaid in the Principal Register of the Patent Offices creates prima facie evidence of the validity of the registration and of plaintiff's exclusive right to use said marks on the goods and services specified in such registrations. Section 1057-(b), Title 15, U.S. Code, expressly so provides. Accordingly the presumption arises therefrom that the statutory prerequisites to valid registration have been met, i. e., (1) Their dissimilarity to other registered marks for similar goods or services, (2) the secondary meaning of said marks, (3) their ownership by plaintiff, and (4) plaintiff's exclusive right to use said marks in commerce in connection with the goods and services specified by plaintiff. See Curtis-Stephens-Embry Co. v. Pro-Tek-Toe Skate Stop Co., 199 F. 2d 407, 413. Defendants have wholly failed to overcome plaintiff's prima facie case herein. Plaintiff's said Registered Marks, to-wit: No. 557,013, No. 566,390 and No. 597-624 are valid, subsisting and legally registered marks.

2. This Court has jurisdiction under the Lanham Act (Sections 1114 and 1121, Title 15, U. S. Code), to enjoin the infringement of plaintiff's said marks by the defendants herein.

3. Defendants are infringing plaintiff's said registered marks in such a manner that confusion has resulted and is bound to reoccur in the future unless injunctive relief, prayed for by the plaintiff, is granted by this Court.

4. Defendants' activities have affected plaintiff's interstate activities as well as plaintiff's activities in Iowa and

defendants' activities have received some national publicity. The use by the defendants of the marks, "Union Farmer" and "Farmers Union" is in direct competition with the plaintiff.

5. Defendants' half hearted issue of "unclean hands" presents a purported defense which the Courts are reluctant to apply and will always scrutinize with a very critical eye. Coca Cola v. Koke, 254 U.S. 143. The actions of plaintiff, of which defendants complain, have no intrinsic connection with the subject matter of this litigation. The contentions of defendants with reference to alleged "unclean hands" are wholly without merit.

6. Plaintiff is entitled to a permanent injunction, enjoining the defendants, both corporate and individual, from the use of plaintiff's service mark, "Farmers Union", plaintiff's collective mark, "Union Farmer", and plaintiff's service mark, the aforesaid symbol of a plow, a rake and a hoe surrounded by a circle. Bulova Watch Co. v. Steele, 194 F. 2d 567, Pure Foods v. Minute Maid Corp., 214 F. 2d 792, and Natl. Tuberculosis Assn. v. Summit County Tuberculosis & Health Assn., 122 F. Supp. 654.

Order for Judgment.

Pursuant to the foregoing,

It is Ordered that the Clerk of this Court enter of record herein the following

Judgment and Decree.

Be It Remembered that on this 11th day of June, 1956, this cause came on for the entry of Judgment and Decree pursuant to the Findings of Fact and Conclusions of Law, filed herein this date, which Findings of Fact and Conclusions of Law are incorporated herein by reference as fully as though repeated at length herein, and, in accordance therewith

It Is Hereby Ordered, Adjudged and Decreed that the defendants, Iowa Farmers Union (formerly Farmers Educational and Cooperative Union of America, Iowa Divi-

sion), Iowa Union Farmer Association, Fred W. Stover, Charles Shearn, George Wharam, Betty Lownes, Lee Harthan, Elmer Gustafson, LeRoy Martin, George Rose, Gustav Mohr, Lester Muhlenbruch, Emil Ronfeldt, Annis Thorson and Lynn Potter, and each of them, be and they are permanently enjoined from making any use whatever, directly or indirectly, of plaintiff's collective mark, "Union Farmer", in connection with the printing, publication and distribution of any newspaper or like periodical, and from making any use whatever, either directly or indirectly, of plaintiff's service marks to-wit: the words, "Farmers Union", and the symbol, consisting of a plow, a rake and a hoe surrounded by a circle, in connection with the dissemination of information pertaining to farming and related industries, and particularly information in connection with cooperatives to aid the farmer in marketing his produce, information relating to educational and entertainment programs, for farmers and their families, information as to proposed legislation that directly or indirectly may affect those engaged in farming and related industries, and services to and for the farmer relating to storage of produce, the making of mortgage loans, the brokerage of produce and livestock, the sale of insurance, and the servicing of farm equipment, and from in any way, directly or indirectly attempting to compete with the plaintiff in its use of said trade marks.

It Is Further Ordered that Judgment be entered against the said defendants for the costs of this action.

/s/ Roy W. Harper,
Judge by Assignment.

At page 53 of Exhibit 1, it is shown that counsel stipulated as follows:

Mr. Miller: As I understand it from counsel, it is conceded that the Charter of the Iowa Division of this plaintiff was revoked at the 1954 convention in Denver, Colorado.

Mr. Clarence Cosson: That is correct.

At pages 53 and 54 of Exhibit 1, it is shown that Tony T. DeChant, Secretary-Treasurer for plaintiff, testified in part as follows:

The name of plaintiff is Farmers' Educational and Cooperative Union of America. It is commonly known as Farmers' Union or National Farmers' Union. There are 3 generally known national farm organizations. They are the Farm Bureau, the National Grange, and the Farmers' Union. The legal name of the National Grange is Patrons of Husbandry; they're not commonly known as the Patrons of Husbandry, they're commonly known as the Grange or the National Grange. The legal name of the Farm Bureau is the American Farm Bureau Federation; they're not usually known by that name, they're usually known as the Farm Bureau. According to the Articles of Incorporation and the Constitution and Bylaws of the plaintiff, it has authority to issue charters to subordinate unions, such as local unions, county unions, and state unions. The name of the Iowa Division when it was a subordinate division to the National Farmers' Union was the Farmers' Educational and Cooperative Union of America, Iowa Division. It was not commonly known by that name. It was commonly known as the Farmers' Union in Iowa or the Iowa Farmers' Union. That is true of the other divisions of the Farmers' Union. There are 17 chartered subdivisions. I know the membership of those divisions. The National Farmers' Union publishes a monthly newspaper. Exhibit "M" is the November, 1955, issue of the "National Union Farmer." That is the name of a newspaper. The chartered subdivisions of the National Farmers' Union as of December 31, 1955, with membership, are Arkansas, 14,109, Illinois, 4,240, Indiana, 5,754, Kansas 10,209, Michigan 3,392, Minnesota, 35,011, Montana 14,683, Nebraska, 16,150, North Dakota, 42,666, Oklahoma, 50,010, Oregon, 2,397, Rocky Mountain, consisting of Colorado and Wyoming, 18,089, South Dakota, 18,960, Texas, 4,252, Utah, 2,092, Virginia, 6,273, Wisconsin, 11,974.

We have members in other states where we do not have a division. We have memberships in Alabama, Idaho, Iowa, Kentucky, New Mexico, North Carolina, Ohio, Pennsyl-

vania, Tennessee, and Washington. There are a few on a membership-at-large basis in Washington, D. C. In 1955, we had 273,082 farm families representing this membership. That would make a voting membership of 600,000 members.

We had 1,193 members in Iowa in 1951, 1,491 in 1952, 1,311 in 1953. In 1954 the Iowa Division was revoked. In 1954 there were 153 members. In 1955, 366, and in 1956, 525 to date. We received $493.50 from the membership of Iowa in 1954. The receipts from Iowa in 1955 were $3,116.00. The receipts to date in 1956 are $4,726.50. Our expenses in Iowa for 1954 were $1,427.18 and in 1955 our expenses were $9,474.78. We have projected a budget for 1956 of approximately $25,000.00 for Iowa.

At pages 56 and 57 of Exhibit 1, it is shown that DeChant testified further as follows:

The division in Arkansas publishes a newspaper named "Arkansas Union Farmer"; the Illinois Division, the "Illinois Union Farmer"; the Kansas Division publishes a newspaper. The name of it is "Kansas Union Farmer"; the Indiana Division publishes "Indiana Farmers' Union News." The Rocky Mountain Division, composed of Colorado and Wyoming, publish a newspaper named "Rocky Mountain Union Farmer." The Oregon Division publishes a newspaper named "Oregon Union Farmer." Our division in Montana publishes a newspaper named "Montana Farmers' Union News." The North Dakota Division publishes "North Dakota Union Farmer." The division in South Dakota publishes "South Dakota Union Farmer." The Nebraska Division publishes "Nebraska Union Farmer." The division in Minnesota publishes a newspaper and the name of it is the "Minnesota Edition of the Farmers' Union Herald."

The Oklahoma Division publishes the "Oklahoma Union Farmer." The Wisconsin Division publishes "Wisconsin Farmers' Union News." The Virginia Division publishes "Virginia Union Farmer."

Prior to 1954, while the Iowa Division was in good standing, it published a newspaper. The name of it was the "Iowa Union Farmer." The defendants are continuing to publish a newspaper since 1954. Exhibit "S" is the January, 1955, issue of "Iowa Union Farmer." It was mailed to the National Farmers' Union, Denver, Colorado.

Mr. Miller: I understand that the circulation of "Iowa Union Farmer" goes outside the State of Iowa, is that right, Mr. Cosson?

Mr. Clarence Cosson: That is correct.

At pages 60 and 61 of Exhibit 1, it is shown that Lynn Potter testified in part as follows:

I was in attendance at the meeting in the Burr Oak Hall. I don't remember the exact name of the lodge. * * * Mr. Stover was present at that meeting. He is now President of the Organization that calls itself the Iowa Farmers' Union. He spoke for a few moments. He was advised to say a few words, and he did. * * * Q. What statements did he make? A. "Membership in the Iowa Farmers' Union does not just mean that you belong to the Farmers' Union, but that the Farmers' Union belongs to you." Referring, of course, to the Iowa Farmers' Union. "It will become what you as members make it."

At page 64 of Exhibit 1, it is shown that James G. Patton testified in part as follows:

I was President of the plaintiff, National Farmers' Union, at the time the charter of the Iowa Division was revoked. The National Farmers' Union began in November, 1955, to put on a campaign to restore its membership in the State of Iowa. On November 22, a meeting of some 300 people was held in Des Moines. There were 2 or 3 speeches made at the meeting. Following the meeting, I was told that it was a meeting of a number of people who constituted themselves as an organization committee. A

state director of organization for the National Farmers' Union was employed, by the name of Mr. Maurice O'Reilly.

At pages 66 to 68 of Exhibit 1, it is shown that Maurice O'Reilly testified in part as follows:

As director of organization in Iowa, I have contacted a number of farmers in Iowa to secure their assistance in this membership work. * * * Q. What did you encounter? A. Often times, in quite a number of cases where I would be recruiting people to help us on our membership drive, they would say that they didn't want to join any Farmers' Union until it was determined which—that there was only one Farmers' Union. In other words, there was another Farmers' Union, and what about that? Was I working for the old Farmers' Union group that had been—whose charter had been revoked, or what kind of a Farmers' Union was it that we were trying to organize? * * *

I found people who thought that the defendant was still part of the National organization several times. I can give names of people who were under that misapprehension. One in particular, one Albert Wolf of Lyon County and I do not know the name of the town that he lives in or what his post office address is. I talked to Mr. Wolf about 3 weeks ago. If Mr. Wolf knew of the differences that had arisen between the defendant and the plaintiff, he didn't tell me that he knew of them. He came to me after a public meeting and told me, he said, "It looks like I have joined the wrong Farmers' Union. I have already joined one." I don't know whether Mr. Wolf's son was with him. I do not know what his first name was, but I visited, more or less of a concurrent visit with them. I did not tell you how many there were that I had come across who were under this misapprehension. I said several. I would say easily that I have talked to 25 or 30. Most of the people I talked to are people whom I am trying to get to help us, but not actually soliciting membership. I would easily say that there have been that many who have brought it up, who have asked questions that indicated

that they did not know which was which, I mean whether that old group was still affiliated with the National organization or not. Some of them did know that there were 2 organizations and some of them didn't. Some of them did not distinguish between the 2. * * * The other competition is not worrying us as much as the fact that we have 2 organizations seeking membership who carry the same name.

At page 85 of Exhibit 1, it is shown that Fred W. Stover, appellant herein, testified in part as follows:

In March, 1954, when the charter of the Iowa Division of the National Farmers' Union was cancelled and revoked, I was then President of the Iowa Division. I was also President of the Iowa Union Farmer Association at that time, and I have continued to be President of the group now called the Iowa Farmers' Union, continuously since then and I have continued to be President of the Iowa Union Farmer Association. I have continued to publish the newspaper "Iowa Union Farmer" the same as I did when I was President of the Iowa Division of the National Farmers' Union. We don't contend that the Iowa Farmers' Union is affiliated with the National Farmers' Union. Otherwise, I guess our contacts with our members are the same as before. We are now engaged in a campaign to increase that membership. We continued to work to increase the membership since March 1, '54. The Iowa Division, of which I am the President, was known as the Iowa Farmers' Union before 1954. It was often referred to as such. The other defendants in this case have continued to act as officers and directors of various corporations since 1954. Except for the fact that we no longer have any contact with the National Farmers' Union, the business of both groups has been substantially the same at all times since 1954

At page 94 of Exhibit 1, notice of appeal is set forth as follows:

NOTICE OF APPEAL.

(Filed July 11, 1956.)

Notice is hereby given that the defendant corporation heretofore known and referred to in this case as Iowa Farmers Union (formerly Farmers Educational and Cooperative Union of America, Iowa Division), and the defendant corporation heretofore known and referred to in this case as Iowa Union Farmer Association, and the individual defendants, Fred W. Stover, Charles Shearn, George Wharam, Betty Lownes, Lee Harthan, Elmer Gustafson, LeRoy Martin, George Rose, Gustave Mohr, Lester Muhlenbruch, Emil Ronfeldt, Annis Thorson and Lynn Potter and each of them hereby appeal to the Court of Appeals, Eighth Circuit, from the findings, conclusion, judgment and decree of the District Court entered herein on June 13, 1956.

EXTRACT FROM EXHIBIT B.

Appellant's Exhibit B herein is a typewritten brief, filed by appellee with the trial court in the injunction case. (R. 36) Page 25 thereof is as follows:

DIVISION II

PLAINTIFF IS ENTITLED TO THE INJUNCTION HEREIN SOUGHT UNDER THE COMMON LAW PRINCIPLES RELATING TO UNFAIR COMPETITION.

Authorities.

See Points and Authorities in Division IV, at pages 28 to 30 of Plaintiff's original Memorandum for Trial Brief heretofore submitted herein.

Argument.

In addition to plaintiff being entitled to the injunction herein sought by reason of the provisions of the Lanham

Act, as pointed out in Division I hereof, supra, plaintiff is also entitled to such injunctive relief under the Common Law Principles relating to Unfair Competition. However, since this proposition is fully covered by Division IV of Plaintiff's original Memorandum for Trial Brief, at pages 28 to 48 thereof, we will not repeat herein what is there set forth, but merely incorporate the same herein by reference as fully as though it were repeated at length herein. It is respectfully submitted that, by reason of the matters there set forth, the evidence clearly demonstrates that the amount in controversy herein exceeds $3,000, there is diversity of citizenship, and, under common law principles relating to unfair competition, this Court has jurisdiction, pursuant to the provisions of Sections 1332 and 1338, Title 28, U.S.C.A., to grant the plaintiff herein the injunctive relief sought by it and that the evidence abundantly warrants and requires the granting of such relief by this Court.

EXTRACT FROM EXHIBIT 2

At page 2 of Exhibit 2 appears the following statement by appellant:

> Here is an explanation of what happened. Shortly after the suit was started, the lawyers met for a pre-trial conference with Judge Wm. Riley, who is the judge for the U.S. Southern District of Iowa. Our attorneys agreed not to use the trade marks and symbols, not to use the name Farmers Educational and Cooperative Union of America, Iowa Division, and not to claim that we represent the N.F.U. Thereupon Judge Riley commented that if that were done there probably wouldn't be any trial, it would be a moot case. This apparently did not satisfy the N.F.U. officials, who quite obviously wanted us put clear out of business. But there the whole thing hung until February of this year, when the case was finally docketed. Unfortunately, at that time Judge Riley was ill in the hospital. Judge Roy Harper of Missouri, a Truman appointee and a friend of Charlie

Brannan was assigned to hear the case. He knew nothing about the case before—about the pre-trial conference and the discussions that had been held before Judge Riley. It seems that he paid no attention to our answer, our briefs and arguments or testimony. His excuse seemed to be that we had conceded the legality of the charter revocation, and therefore all the long record of N.F.U. interference in I.F.U. affairs had no bearing.

EXTRACTS FROM EXHIBIT 5.

At page 4 of Exhibit 5 appears the following statement by appellant:

Some farmers still have doubts about the I.F.U. being able to survive Patton's raids and injunctions and some subscribers to U.S.F.U. News have the same doubts about the paper being able to continue. Since some farmers may hesitate to join an organization that is due for extinction and F.U. Members outside of Iowa may not be interested in advancing subscriptions to a paper that is about to fold up, the following is submitted to reassure one and all.

"The Fraternal organization, now past 40, is not going to fold up in spite of all of the injunction suits that Patton and his Chore boys in Iowa are using to harass and retard the Organization.

"The Iowa Union Farmers Association is now in better position than it has ever been.

"The paper will continue. Patton can't stop it."

At page 7 of said Exhibit 5, it is stated:

Iowa Farmers Union Receives Educational Funds.

The Iowa Farmers Union has received Educational Funds during 1956 from the following Farmers Union Cooperatives.

The Farmers Union Live Stock Commission, Omaha, $18.86.

The Farmers Union Live Stock Commission, Sioux City, $139.29.

The Farmers Union Live Stock Commission, Sioux Falls, $1,342.18.

Farmers Union Marketing Association, St. Paul, $31.33.

Farmers Union Grain Terminal Association, $731.42.

The Great Plains Supply Co. (GTA), $2,628.36.

CORRECTIONS AND ADDITIONS TO APPELLANT'S RECORD HEREIN.

There are a number of typographical errors in appellant's record.

The word "we" in the third line of the quoted portion of Paragraph 3 on page 2 of the Record should be "he" and the word "excuses" in the seventh line of said quoted paragraph should be "excuse".

The figures "1947" in the third line of the second paragraph of the Order on page 5 of the Record should be "1957" and there should be inserted after the word "should" in the fourth line of said paragraph the word "not".

The word "Monday" in the thirteenth line of the first full paragraph at page 38 of the Record should be changed to "Wednesday".

The words and figures "June 15, 1956" in the twelfth line of the seventh paragraph at page 41 of the Record should be changed to "June 13, 1956".

The words "set of papers" in the first line of the second paragraph of page 48 of the record should be changed to "sheet of paper".

The figures "257" in the fifth line of the fourth full paragraph on page 63 of the Record should be changed to "237".

The following testimony of the appellant Stover should be inserted following the seventh line from the bottom of page 54 of the Record, to-wit: .

MR. MILLER: Your honor, just to save time, could I make this man my witness for a couple of questions?

THE COURT: Yes. You have a right to do that.

Q. (By Mr. Miller on Direct). On page 7 of the copy of this paper which is marked Exhibit 5 is the report of receipts for educational funds, is it not? A. Yes.

Q. And during the noon hour you investigated the record and ascertained that those funds had been received by the Iowa Farmers Union since the decree was entered, is that not true?

MR. McMANUS: Now, just a minute. Now this line of examination is objected to for the reason that it is incompetent, immaterial, and irrelevant to any issue involved in this proceedings, and an attempt to investigate a collateral matter not involved in the contempt charge, and this matter of the collection of funds is a matter which should have been litigated in the prior trial of this case, and has no place in this proceeding. And it is objected to as incompetent, immaterial and irrelevant.

MR. MILLER: Well, it already—

THE COURT: I don't perceive where—however, for impeachment purposes—is that the offer?

MR. MILLER: No, it is plead in the citation, your honor, in the last paragraph. It is plead.

THE COURT: To shorten it up, I will just receive it subject to the objection, and I can rule on it.

MR. MILLER: Will you read the question to him.

(The pending question was read back to the witness as follows: "Q. And during the noon hour you investigated the record and ascertained that those funds had been received by the Iowa Farmers Union since the decree was entered, is that not true?") A. Yes.

Q. And those funds were collected in the name of Iowa Farmers Union?

MR. McMANUS: Now just a minute. Same objection.

THE COURT: I will receive it subject to the objection.

A. You use the word "collection". They sent them to us. And we received them and we cashed the checks.

Q. Well, I call your attention to Exhibit 7 and ask you to state if that is not a request for the payment of some of them?

MR. McMANUS: That is objected to for the reason--

A. (Interposing) No, it is not.

MR. McMANUS: Just a minute.

Q. Well, it refers to this $122 down here, doesn't it?

A. No, it does not.

Q. I call your attention to Exhibit 7 and ask you to state whether or not that is your signature on the exhibit? A. It is.

Q. And you mailed that to Mr. Wells, did you not? A. That's right.

Q. And I call your attention to the signature on Exhibit 8 and ask you to state whether or not that is your signature? A. It looks very much like it.

Q. And you mailed that to Mr. Wells, did you not? A. Yes.

Q. Now in regard to subscriptions to your U.S. Farm Union News, I show you this special message, Exhibit 9, which purports to have been sent out by you. Did you send that out? A. Sent one out looked very much like that.

The following testimony of the appellant Stover should be inserted following the fifth line from the top of page 57 of the Record, to-wit:

MR. McMANUS: One more question If I may, your honor. And I want to ask this question without waiving my objections, and I don't believe I do waive them.

Q. But counsel asked you about the receipt of certain funds since June 13th, 1956. Do you know whether or not those funds have been earned and your companies were entitled to them prior to June 13th, 1956, or not? A. I am quite sure that all of such funds were actually due and

earned prior to June 13th, although I think that some of them were received since.

Q. And who did you regard those funds as belonging to?

MR. MILLER: That is objected to—

A. (Interposing) To the members.

MR. MILLER: (Continuing) —as calling for an opinion and conclusion of the witness, and incompetent.

MR. McMANUS: Well, perhaps it is an opinion and conclusion. I don't think it is material anyway.

APPENDIX

(See, also, 247 F 2d 809)

United States Court of Appeals

FOR THE EIGHTH CIRCUIT

No. 15,635

Iowa Farmers Union (Formerly Farmers Educational and Co-operative Union of America, Iowa Division), and Iowa Union Farmers Association, and Fred W. Stover, Charles Shearn, George Wharam, Betty Lownes, Lee Harthan, Elmer Gustafson, LeRoy Martin, George Rose, Gustav Mohr, Lester Muhlenbruch, Emil Ronfeldt, Annis Thorson and Lynn Potter,

Appellants

v.

Farmers' Educational and Co-operative Union of America, A Corporation,

Appellee

Appeal from the United States District Court for the Southern District of Iowa

(August 5, 1957)

James R. McManus, George Cosson and Clarence Cosson were with him on the brief, for Appellants.

Frederic M. Miller, Sherman Morsman and Charles F. Brannan were with him on the brief, for Appellee.

Before WOODROUGH, VOGEL and VAN OOSTERHOUT, Circuit Judges.

WOODROUGH, Circuit Judge.

This action was brought by Farmers' Educational and Cooperative Union of America, a Texas corporation, against Farmers Educational and Cooperative Union of America, Iowa Division, and Service Association, a corporation, and others, to enjoin the defendants from an alleged infringement of three of plaintiff's trade marks, all of which are registered on the Principal Register of the United States Patent Office. The trade marks are, (1) a symbol and service mark, consisting of a plow, rake and hoe, surrounded by a circle, (2) a collective mark for goods, consisting of the words, "Union Farmer", used for newspapers published by plaintiff and its divisional organizations, and (3) a service mark, consisting of the words "Farmers Union", used by plaintiff in the sale and advertisement of services.

On the trial of the case the court held that federal jurisdiction was conferred by the Lanham Act of 1946, 15 U.S.C.A. § 1051 et seq., and rendered judgment for plaintiff in accord with the opinion reported at 141 F. Supp. 820 and findings of fact and conclusions of law which are appended.[1]

---

[1] Findings of fact and conclusions of law filed June 13, 1956.

1. This action was commenced on February 14, 1955, by the plaintiff, Farmers Educational and Cooperative Union of America, a Texas Corporation duly authorized to transact business in the State of Iowa, against the corporate and individual defendants, above named, to enjoin said defendants from infringement of three of plaintiff's trade marks, all of which are registered on the Principal Register of the United States Patent Office, to-wit: (1) a symbol and service mark, consisting of a plow, a rake and hoe, surrounded by a circle, (2) a collective mark for goods, consisting of the words, "Union Farmer", used for newspapers published, and (3) a service mark, consisting of the words, "Farmers Union", used by plaintiff in the sale and advertisement of services.

2. It was stipulated that the Farmers Educational and Cooperative Union of America, Iowa Division, and Service Association, a corporation, is no longer in existence and was not in existence at the time of the commencement of this action, was

not served and is not a party to these proceedings. The defendants, Farmers Educational and Cooperative Union of America, Iowa Division, and the Iowa Union Farmer Association, are both Iowa Corporations.

3. Jurisdiction is invoked under the Lanham Act.

4. The defendants conceded at the trial that plaintiff is entitled to the exclusive use of its symbol and service mark, consisting of a plow, a rake and hoe, surrounded by a circle and asserted that they are not using and will not use said symbol and service mark in the future. Defendants admit that they are using the other marks, namely, "Union Farmer" and "Farmers Union" and asserted that they intend to continue to use said marks unless restrained from so doing.

5. The evidence is undisputed that the use by the defendants of the marks, "Union Farmer" and "Farmers Union" is in direct competition with the plaintiff.

6. The plaintiff, a Texas corporation duly authorized to do business in Iowa, has been operating on a national scale since 1906. Its purposes, as stated in its articles of incorporation, include "to protect its members engaged in the various branches of the farming industries, in their various pursuits, which in promoting and safeguarding their interests, is partially educational, fraternal, benevolent, and cooperative."

7. In furtherance of its purposes aforesaid, plaintiff publishes and distributes a newspaper, various pamphlets and a Washington newsletter, examples of which were introduced in evidence. Each of them displayed plaintiff's service mark, "Farmers Union" and most of them displayed, in conjunction therewith, plaintiff's symbol, the plow, rake and hoe surrounded by a circle. The plaintiff's newspaper is published under the name of the "National Union Farmer" and has displayed therewith the aforesaid symbol. In 16 of the 29 States in which plaintiff has members it has set up State organizations and of these at least nine publish newspapers that use plaintiff's mark, "Union Farmer". The Kansas division of plaintiff has published its "Kansas Union Farmer" continuously since 1911.

8. The defendant, Farmers Educational and Cooperative Union of America, Iowa Division, was originally an unincorporated association located in Iowa, which, in December, 1924, became a corporation pursuant to the laws of Iowa. On October 8, 1917, this defendant was issued a charter by the plaintiff whereby it became an integral part of the plaintiff in the State of Iowa, continuing to be such until 1954. In March, 1954, plaintiff revoked the charter of its Iowa Division and the legality of such revocation was conceded at the trial by the defendants.

9. On September 24, 1955, subsequent to the filing of the complaint herein, this defendant, by amendment to its articles of incorporation, changed its name to Iowa Farmers Union. This new name is identical with the name by which plaintiffs state organizations are commonly, or colloquially, known, and hence is almost identical with the name by which said corporation was commonly,

or colloquially, known before the Iowa Charter was revoked by plaintiff in 1954.

10. The defendant, Iowa Union Farmer Association, publishes a newspaper under the name of "Iowa Union Farmer", whose mark resembles those of plaintiff's state organization newspapers. Prior to the revocation of the charter of the defendant corporation by plaintiff, such publication was authorized by the then legally constituted Iowa Farmers Union and it continues to be so authorized by said organization.

11. Plaintiff's service mark, the symbol, with the plow, the rake and the hoe, surrounded by the circle, was registered in the Principal Register of the Patent Office on November 4, 1952; plaintiff's collective mark for goods, "Union Farmer", usually used for newspapers published by plaintiff and its divisional organizations, was registered in the Principal Register of the Patent Office on November 2, 1954; and plaintiff's service mark, "Farmers Union", was registered in the Principal Register of the Patent Office on April 1, 1952.

12. Defendants' activities in Iowa have affected plaintiff's interstate activities as well as in Iowa and defendants' activities have received some national publicity. The use by the defendants of the marks, "Union Farmer" and "Farmers Union" is in direct competition with the plaintiff. The types of service offered and the names used are so similar that there is bound to be confusion. The evidence shows that confusion has occurred and demonstrates that confusion will reoccur. Defendant's activities adversely and seriously affect plaintiff's national organization and its nation-wide program.

13. Defendants failed to produce any evidence that plaintiff's trade marks are invalidly registered. The evidence shows that plaintiff's marks have acquired a secondary meaning and the Patent Office did not err in so determining. The evidence of Iowa corporations using the words, "Farmers" and "Union", demonstrates that all of said corporations, some of whom are licensees of the National Farmers Union, dispense goods and services different from plaintiff so that they are not, in competition with plaintiff and their existence is no aid to defendants.

14. Defendants' evidence on its asserted issue of "unclean hands" is not clear. It seems to refer to the revocation of the charter of the Iowa division because the Iowa division did not see eye to eye with the national organization on political matters. Such actions have no intrinsic connection with the subject matter of this litigation having to do with inter-organizational strife whereas the subject matter of the litigation is trade mark infringement.

The Court makes the following

Conclusions of Law

1. Plaintiff's registration of its three marks aforesaid in the Principal Register of the Patent Office creates prima facie evi-

The injunction ordered is also appended.[2]

It appears from the record that there are three old and generally well known farmers organizations in the United States, namely, the "Farm Bureau", "The National Grange"

---

dence of the validity of the registration and of plaintiff's exclusive right to use said marks on the goods and services specified in such registrations. Section 1057(b), Title 15, U.S. Code, expressly so provides. Accordingly the presumption arises therefrom that the statutory prerequisites to valid registration have been met, i.e. (1) Their dissimilarity to other registered marks for similar goods or services, (2) the secondary meaning of said marks, (3) their ownership by plaintiff, and (4) plaintiff's exclusive right to use said marks in commerce in connection with the goods and services specified by plaintiff. See *Curtis-Stephens-Embry Co.* v. *Pro-Tek-Toe Skate Stop Co.*, 199 F.2d 407, 413. Defendants have wholly failed to overcome plaintiff's prima facie case herein. Plaintiff's said Registered Marks, to-wit: No. 557,013, No. 556,390, and No. 597,624, are valid, subsisting and legally registered marks.

2. The Court has jurisdiction under the Lanham Act (Sections 1114 and 1121, Title 15, U.S. Code), to enjoin the infringement of plaintiff's said marks by the defendants herein.

3. Defendants are infringing plaintiff's said registered marks in such a manner that confusion has resulted and is bound to reoccur in the future unless injunctive relief, prayed for by the plaintiff, is granted by this Court.

4. Defendants' activities have affected plaintiff's interstate activities as well as plaintiff's activities in Iowa and defendants' activities have received some national publicity. The use by the defendants of the marks "Union Farmer" and "Farmers Union" is in direct competition with the plaintiff.

5. Defendants' half hearted issue of "unclean hands" presents a purported defense which the Courts are reluctant to apply and will always scrutinize with a very critical eye. *Coca Cola* v. *Koke*, 254 U.S. 143. The actions of plaintiff, of which defendants complain, have no intrinsic connection with the subject matter of this litigation. The contentions of defendants with reference to alleged "unclean hands" are wholly without merit.

6. Plaintiff is entitled to a permanent injunction, enjoining the defendants, both corporate and individual, from the use of plaintiff's service mark, "Farmers Union", plaintiff's collective mark, "Union Farmer", and plaintiff's service mark, the aforesaid symbol of a plow, a rake and a hoe surrounded by a circle. *Bulova Watch Co.* v. *Steele*, 194 F.2d 567, *Pure Foods* v. *Minute Maid Corp.*, 214 F.2d 792, and *Natl. Tuberculosis Assn.* v. *Summit County Tuberculosis & Health Assn.*, 122 F. Supp. 654.

[2] Judgment and Decree.

It is hereby Ordered, Adjudicated and Decreed that the defendants, Iowa Farmers Union (formerly Farmers Educational and

and the "Farmers Union" which have endured a long time more or less in the public eye and the plaintiff in this action is the last named, to-wit: "Farmers Union." Its general plan is and has always been to have local unions formed which are federated with county units and these with a state organization and when there has been due compliance with its requirements, it issues a charter to the state organization, and in that way every individual member of a local union becomes a member of the national Farmers Union and entitled to share in its many and varied activities and advantages. Since 1906 the national organization has actively sought and enlisted members, organized farmer cooperatives, published numerous books and pamphlets and a weekly newspaper named "National Union Farmer". Many of its component unions under the authority of their respective charters have for many years published newspapers with "Union Farmer" as part of the name completed with the name of the state or locality.

Plaintiff's function in connection with its 18 state divisions and in the 29 states in which it has members is to

---

Cooperative Union of America, Iowa Division), Iowa Union Farmer Association, Fred W. Stover, Charles Shearn, George Wharam, Betty Lownes, Lee Harthan, Elmer Gustafson, LeRoy Martin, George Rose, Gustav Mohr, Lester Muhlenbruch, Emil Ronfeldt, Annis Thorson and Lynn Potter, and each of them, be and they are permanently enjoined from making any use whatever, directly or indirectly, of plaintiff's collective mark, "Union Farmer", in connection with the printing, publication and distribution of any newspaper or like periodical, and from making any use whatever, either directly or indirectly, of plaintiff's service marks to wit: the words, "Farmers Union", and the symbol, consisting of a plow, a rake and a hoe surrounded by a circle, in connection with the dissemination of information pertaining to farming and related industries, and particularly information in connection with cooperatives to aid the farmer in marketing his produce, information relating to educational and entertainment programs, for farmers and their families, information as to proposed legislation that directly or indirectly may affect those engaged in farming and related industries, and services to and for the farmer relating to storage of produce, the making of mortgages, loans, the brokerage of produce and livestock, the sale of insurance, and the servicing of farm equipment, and from in any way, directly or indirectly attempting to compete with the plaintiff in its use of said trade marks.

It Is Further Ordered that Judgment be entered against the said defendants for the costs of this action.

foster and maintain local and state organizations—and through organization aid in improving conditions of life of the farmers. The various agricultural publications, the weekly newspaper and the Washington news letter are sent to some 375,000 farm families in the United States on a paid subscription basis and the record shows the budget for the weekly newspaper to be in the neighborhood of $70,000 a year. In terms of all publications issued to members bearing the name "Farmers Union" the cost is in excess of one million dollars a year.

The first local Farmers Union in Iowa was chartered on January 25, 1915, and between January 20, 1915, and September 24, 1917, a total of 236 local unions and 8 county unions were chartered in Iowa. The charter of the defendant corporation was granted in 1917, and conferred upon it the right to use the trade marks and name "Iowa Farmers Union" or "Farmers Union in Iowa" in soliciting funds and members and identifying itself and its activities as a component division of the plaintiff. It always availed itself of that right and so held itself out. In March of 1954, its charter was legally revoked by plaintiff as was conceded on the trial and all rights under it were withdrawn.

Notwithstanding the revocation, the individual Iowa defendants and through them, the Iowa organizations have continued to carry on the same activities under the name "Iowa Farmers Union" or "Farmers Union in Iowa" and to use the same trade marks as they did before the revocation. They caused a new Iowa corporation to be organized, bearing the name by which the plaintiff is commonly called and they carried on as before. They admit they have no right to use the registered symbol and service mark consisting of the plow, hoe and rake belonging to plaintiff and will desist from such use, but they admit they are using and will use the plaintiff's registered trade marks, "Union Farmer" and "Farmers Union". They appeal from the decree of injunction rendered against them forbidding them to do so.

Although the court's findings of fact were extended and comprehensive, appellants assert insufficiency of evidence only as to the paragraphs of the findings numbered five, ten, twelve and thirteen.

In paragraph five the court found that defendants' use of the marks "Union Farmer" and "Farmers Union" was in direct competition with the plaintiff and we think the finding is fully supported by the evidence. From 1917 to 1954 defendant Iowa Farmers Union operated under a charter from plaintiff as an integral part of plaintiff as plaintiff's Iowa division. In March, 1954, the charter was lawfully revoked as conceded and since the revocation the individual defendants have operated the corporations the same as before, but without contact with plaintiff. Plaintiff is conducting a campaign to reestablish its Iowa division and replace the disfranchised organization and in direct opposition defendants conduct their campaign for members. Defendants continue to publish the Iowa Union Farmer the same as they did when they were members of the Iowa Division of plaintiff. The plaintiff has operated on a national scale for fifty years. It publishes the newspaper National Union Farmer and has State organizations in 18 of the 29 States in which it has members and at least nine of these publish newspapers using plaintiff's mark "Union Farmer". Defendants in using the name Iowa Farmers Union not only use plaintiff's registered mark "Farmers Union", but also use a name that is identical with the name by which plaintiff's State organizations are commonly known as well as the name by which defendant was known when it belonged to and constituted the Iowa Division of the plaintiff. Obviously the plaintiff and defendants are engaged in the same line of endeavor by the same kind of activities in the same field and defendants use of plaintiff's mark is in direct competition with plaintiff as found by the court.

In paragraph ten of the findings, the court found that defendant Iowa Union Farmer Association publishes a newspaper under the name Iowa Union Farmer, whose mark resembles those of plaintiff's state organization newspapers. Such publication was admitted in defendant's pleading. The name of plaintiff's national newspaper is National Union Farmer. Plaintiff's Kansas Division publishes a newspaper named the "Kansas Union Farmer"; Illinois, the "Illinois Union Farmer", Arkansas, the "Arkansas Union Farmer"; Indiana, the "Indiana Union Farmer", the Rocky

Mountain Division, the "Rocky Mountain Union Farmer"; North Dakota, the "North Dakota Union Farmer"; Nebraska, the "Nebraska Union Farmer"; South Dakota, the "South Dakota Union Farmer"; Oklahoma, the "Oklahoma Union Farmer" and Virginia, the "Virginia Union Farmer."

The court's finding of fact No. 10, that the defendant, Iowa Union Farmer Association, publishes a newspaper under the name of "Iowa Union Farmer", whose mark resembles those of plaintiff's state organization newspapers is supported by and in accord with the evidence.

In paragraph 12 the court found as follows:

> "12. Defendants' activities in Iowa have affected plaintiff's interstate activities as well as in Iowa and defendants' activities have received some national publicity. The use by the defendants of the marks, 'Union Farmer' and 'Farmers Union' is in direct competition with the plaintiff. The types of service offered and the names used are so similar that there is bound to be confusion. The evidence shows that confusion has occurred and demonstrates that confusion will reoccur. Defendants' activities adversely and seriously affect plaintiff's national organization and its nationwide program."

Following the cancellation of the charter of its Iowa Division, the plaintiff employed one Maurice O'Reilley as organizing director for Iowa, who testified for plaintiff on the trial concerning the confusion that exists between the Iowa defendants and the plaintiff National Farmers Union. He said many Iowa farmers said they did not want to join any Farmers Union until it was determined that there was only one, that many have shown they did not know which organization was which and whether or not the old group was still affiliated with the national organization; that some knew there were two organizations and some did not and some did not distinguish between the two. Some attending meetings called by O'Reilley have said that they appear to have joined the wrong union. The defendants are asserting the right to use the plaintiff's registered marks and claiming that the name Farmers Union belongs to the de-

fendant Iowa Farmers Union and not to the plaintiff. The confusion exists and is inevitable and will continue to result. The same types of service are offered by both sides under the names that belong to the plaintiff alone and the defendants infringe in the field of activity for which plaintiff's marks are registered. Defendants' activities in Iowa impede and hinder the re-organization of plaintiff's Iowa division as an integral part of its national organization. The Iowa part is vital and essential as a part of the national organization and defendants' activities there directly and materially affect plaintiff's national operation. Finding No. 12 is substantially supported and in accord with the evidence.

The trial court's finding of fact No. 13 is as follows:

> "13. Defendants failed to produce any evidence that plaintiff's trade marks are invalidly registered. The evidence shows that plaintiff's marks have acquired a secondary meaning and the Patent Office did not err in so determining. The evidence of Iowa corporations using the words, 'Farmers' and 'Union' demonstrates that all of said corporations, some of whom are licensees of the National Farmers Union, dispense goods and services different from plaintiff so that they are not in competition with plaintiff and their existence is no aid to defendants."

The Lanham Act provides that five years use of a mark may be considered as evidence of its having acquired a secondary meaning. The evidence here shows that plaintiff's marks "Farmers Union" has been used by plaintiff in operating on a national scale since 1906 and that plaintiff has used the service mark "Union Farmer" continuously since 1911. The only evidence offered by defendants in respect to the secondary meaning in plaintiff's marks was the stipulation that many corporations in Iowa had Farmers Union in their names, but all of them showed by their corporate names that they were mercantile corporations engaged in activities dissimilar to those of the plaintiff.

This finding and each and all of the findings were in accord with the evidence.

Turning to the conclusions of law.

In its conclusions numbers 3 and 4, the court stated that defendants were infringing plaintiff's registered marks in such a manner that confusion has resulted and is bound to reoccur unless enjoined and that defendants' activities have affected plaintiff's interstate activities and have received some national publicity. That defendants' use of plaintiff's registered marks "Union Farmer" and "Farmers Union" was in direct competition with the plaintiff was reiterated as a conclusion of law.

It being conceded that intra-state activities of the defendants, whose actions have a substantially adverse effect upon interstate commerce, comes within the protection of the Lanham Act, the court's declarations in these conclusions are clearly in accord with the Act. The last paragraph of Section 1127, Title 15, U.S.C.A., provides that the intent of the Lanham Act includes the intent "to protect persons engaged in such commerce against unfair competition." Section 1114, Title 15, U.S.C.A., provides that "any person who shall, in commerce, (a) use, without consent of the registrant any reproduction * * * of any registered mark in connection with the sales * * * or advertising of any goods or services on or in connection with such use is likely to cause confusion or mistake * * * or (b) reproduce * * * any such mark and apply such reproduction * * * in connection with the sale in commerce of such goods or services, shall be liable to a civil action by the registrants for any or all of the remedies hereinafter provided in this chapter * * *." The provisions of said Sections 1127 and 1114 are interpreted in the Commentary, page 268, Title 15, U.S.C.A., as follows:

> "The Supreme Court has held that an activity which is local in its nature may be regulated by Congress if it exercised substantial economic effect on interstate commerce. It is therefore apparent that purely intrastate uses may come under the provisions of the Act if they have a substantial economic effect on interstate, territorial or foreign commerce."

The pronouncement last above quoted has been announced and applied repeatedly by the Federal Courts. The following cases are illustrative:

Bulova Watch Co. v. *Steele*, 5 Cir., 194 F.2d 567;
Pure Foods v. *Minute Maid Corp.*, 5 Cir., 214 F.2d 792;
Stauffer v. *Exley*, 9 Cir., 184 F.2d 962;
Nat. T. B. Assn. v. *Summit Co., etc.*, 122 F. Supp. 654;
Cole of Calif., Inc., v. *Collette of Calif.*, 79 U.S.P.Q. 267;
Time, Inc., v. *Life T. V. Corp.*, 123 F. Supp. 470;
Meades v. *N. Eng. Dup. Co.*, 94 F. Supp. 558;
Admiral Corp. v. *Penco, Inc.*, 108 F. Supp. 1015, aff. 203 F.2d 517.

When the charter of the plaintiff's Iowa division was cancelled the defendants were no longer authorized to use plaintiff's registered marks, but they have used them and admit they intend to continue. At one of his meetings, defendant Stover stated, "Membership in the Iowa Farmers Union does not just mean that you belong to the Farmers Union, but that the Farmers Union belongs to you." He plainly meant his hearers to understand that the name they were using was not the plaintiff's, but belonged to the defendants' organization and that its members belong to the Farmers Union but not to plaintiff. Obviously defendants use the name in direct competition with plaintiff and infringe in the field of activity for which the marks are registered. It is material that defendants were formerly associated with plaintiff and are no longer so associated. The former association makes defendants' infringement and misuse of plaintiff's registered marks much more injurious to plaintiff than if the same wrong were committed by a stranger. The evidence shows clearly that defendants' conduct greatly increases the cost and difficulty plaintiff encounters in its undertaking to reestablish the Iowa division which is essential to its national organization and interstate operation.

The court's conclusion of law No. 1 states that plaintiff's registration of its three marks in the Principal Register of the Patent Office created prima facie evidence of the validity of the registration and of plaintiff's exclusive

right to use said marks on the goods and services specified in the registrations and gave rise to the presumption that prerequisites to valid registration had been met; that defendants had failed to overcome plaintiff's prima facie case and that plaintiff's registered marks, to-wit: No. 557013, No. 566390 and No. 597624, are valid, subsisting and legally registered marks.

It is argued for appellants that the plaintiff's marks "Farmers Union" and "Union Farmer" are merely descriptive and generic terms and are not eligible for registration or exclusive appropriation and that the court erred in enjoining their use.

But the Lanham Act provides for the "registration of a mark which has become distinctive of the applicant's goods in commerce." Section 1052(f), Title 15, U.S.C.A. The subsection further provides: "The Commissioner may accept as prima facie evidence that the mark has become distinctive, as applied to the applicant's goods in commerce, proof of substantially exclusive and continuous use thereof as a mark by the applicant in commerce for the five years next preceding the date of the filing of the application for its registration."

In 4 Callman "Unfair Competition and Trade Marks," 2124, Section 98.4(a), it is stated:

> "A registrable mark under the Lanham Act must, of course, be capable of distinguishing the goods and services of the trade mark owner. Under the old Act, the acid test of the registrability of the mark was the primary or common meaning and the mark was rejected if it consisted of a name or a descriptive or geographical term, no matter how famous it had become. The new Act, however, permits the registration of marks that have lost such primary meaning and have acquired a secondary significance, so as to symbolize the goods or services of a particular business and distinguish them."

Not only does the Lanham Act provide that a mark which has acquired a secondary meaning can be registered and be entitled to full protection thereunder but it also

contains a provision, which is new, that registration in the Principal Register of the Patent Office is prima facie evidence of valid registration of a mark. Subsection (b), Section 1057, Title 15, U.S.C.A., provides as follows:

> "(b) A certificate of registration of a mark upon the principal register provided by this chapter shall be prima facie evidence of the validity of the registration, registrant's ownership of the mark, and of registrant's exclusive right to use the mark in commerce in connection with the goods or services specified in the certificate, subject to any conditions and limitations stated therein."

Subsection (a), Section 1115, Title 15, U.S.C.A., provides that registration of a mark in the Principal Register of the Patent Office, as provided by said chapter, "shall be prima facie evidence of the registrant's exclusive right to use the registered mark in commerce on the goods or services specified in the certificate, subject to any conditions or limitations stated therein."

In interpreting the statutory provision above quoted, this Court, in the case of *Curtis-Stephens-Embry Co.* v. *Pro-Tek-Toe Skate Stop Co.*, C.C.A. 8, 199 F.2d 407, 413, stated as follows:

> "By subsection (b) of Sec. 7 of the Act of 1946, 15 U.S.C.A., section 1057(b), a certificate of registration of a mark on the principal register is made prima facie evidence of the validity of the registration, the registrant's ownership of the mark, and of registrant's exclusive right to use the mark in commerce in connection with the goods specified in the certificate, subject to any conditions and limitations stated therein. Therefore, when a mark is registered upon the principal register under the Act of 1946, the presumption arises that the statutory prerequisites to its valid registration have been met, i.e. (1) its dissimilarity to other registered marks for similar goods, (2) its secondary meaning, (3) its ownership by the applicant, and (4) the applicant's exclusive right to use the trade-mark in commerce in connection with the goods specified."

The above pronouncement has been repeatedly recognized and applied. The following cases are illustrative:

Feil v. *American Serum Co.*, 8 Cir., 16 F.2d 88;

Weiner v. *Nat. Tinsel Mfg. Co.*, 7 Cir., 123 F.2d 96;

Pastifico Spiga, etc., v. *DeMartini*, 2 Cir., 200 F.2d 325;

Rolly, Inc., v. *Younghusband*, 9 Cir., 204 F.2d 209;

Jas. Heddon Sons v. *Millsite Steel & Wire Wks.*, 6 Cir., 128 F.2d 6;

See also Nims, Unfair Competition and Trade Marks, 4th Ed., 1075, 1076.

The evidence herein shows that plaintiff's mark, "Farmers Union," has been used on a nation wide basis continuously since 1906. The only other two national organizations of farmers that have been in existence during that time are the Patrons of Husbandry, which is known as the National Grange, and the American Farm Bureau Federation, which is usually known as the Farm Bureau. The record is undisputed that no organization of farmers, other than the plaintiff and its subordinate organizations, have used the name, "Farmers Union" for the last fifty years. Obviously, the record shows that plaintiff's mark, "Farmers Union" has acquired distinction and a secondary meaning.

In addition to the foregoing, Subsection (b) of Section 1057, Title 15, U.S.C.A., places the burden on the defendants to overcome the presumption arising from the registration of plaintiff's marks in the Principal Register of the Patent Office. This presumption includes the following: (1) the dissimilarity of plaintiff's marks to other registered marks for similar goods or services, (2) the secondary meaning of plaintiff's marks, (3) the ownership of the marks by plaintiff, and (4) plaintiff's exclusive right to use said marks in commerce in connection with the goods and services specified by the plaintiff in such registration. The trial court correctly held that the defendants had wholly failed to overcome this presumption.

We find no error in the court's conclusion of law No. 1.

Appellants also argue that the marks in question "Farmers Union" and "Union Farmer" if validly registered at all are at best weak marks entitled to only limited protection.

but we find no error in the court's conclusion that the doctrine of hierarchy of marks is not applicable in this case. The plaintiff's marks have acquired a secondary meaning during the many years of their exclusive use by the plaintiff in the field of its operation and defendants' infringement of them in the same field is violative of the Act.

Appellants complain of the provision of the judgment which enjoins them "from in any way attempting to compete with plaintiff in its use of said trade marks." They argue that the court rested its jurisdiction on the Lanham Act and that that Act does not confer jurisdiction to protect from unfair competition. We do not sustain the contention.

Section 1127, Title 15, U.S.C.A., in the last paragraph thereof, provides that the intent of Congress, in adopting the Lanham Act, included intention to protect persons engaged in interstate commerce against unfair competition and Section 1114, Title 15, U.S.C.A., provides an adequate remedy to afford such protection.

In the Commentary, Title 15, U.S.C.A., page 269, it is stated:

> "Federal Courts have jurisdiction of all actions arising under the Act, and for the first time their jurisdiction clearly extends to the interstate user of a mark which infringes a mark registered under the Federal Act, as well as to intrastate acts of unfair competition irrespective of the amount in controversy or diversity of citizenship."

In the present case, defendants' infringements are in interstate commerce within the intendment of the Lanham Act and we are in accord with the declaration of the ninth circuit in *Stauffer* v. *Exley*, 184 F.2d 962, 963, 964:

> "The trial court reached the conclusion that the Trade-Mark Act of July 5, 1946, does not confer original jurisdiction upon the district court of the United States in actions for unfair competition in the absence of diversity of citizenship of the parties where there is no substantial and related claim under the copy-

right, patent or Trade-Mark laws joined with such actions. We do not agree."

The Lanham Act of July 5, 1946, 15 U.S.C.A., sections 1051 and 1127 hereinafter referred to as the Act, provides comprehensively for federal registration and protection of trade marks, for protection of trade names and for remedies against unfair competition.

We are satisfied the court had jurisdiction and substantial grounds to protect plaintiff from defendants' unfair competition under the Lanham Act.

We find no error in the proceedings, opinion, findings, conclusions or judgment of the trial court.

Affirmed.

A true copy.

Attest:

Clerk, U. S. Court of Appeals, Eighth Circuit.

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 15,635

Iowa Farmers Union (Formerly Farmers Educational and Co-operative Union of America, Iowa Division), and Iowa Union Farmers Association, and Fred W. Stover, Charles Shearn, George Wharam, Betty Lownes, Lee Harthan, Elmer Gustafson, LeRoy Martin, George Rose, Gustav Mohr, Lester Muhlenbruch, Emil Ronfeldt, Annis Thorson and Lynn Potter, Appellants, v. Farmers' Educational and Co-operative Union of America, A Corporation, Appellee.	Appeal from the United States District Court for the Southern District of Iowa.

On Consideration of Petition for Rehearing.

(September 30, 1957.)

Before WOODBROUGH, VOGEL and VAN OOSTERHOUT, Circuit Judges.

WOODBROUGH, Circuit Judge.

In the brief of appellants on their petition for rehearing they contend that this court has held erroneously that the Lanham Act conferred original jurisdiction upon District Courts in actions for unfair competition and they argue that the decision of this court is in conflict with the Second Circuit in *American Auto Association* v. *Spiegel*, 205 F.2d 771, the Third Circuit in *L'Aiglon Apparel* v. *Lana Lobell, Inc.*, 214 F.2d 649 and the Fifth Circuit in *Royal Lace Paper Works, Inc.* v. *Pest-Guard Products, Inc.*, 240 F.2d 814.

To avoid possibility of such construction of our opinion, it is ordered that the paragraphs of the slip opinion herein of August 5, 1957, on page 18 thereof, beginning on the sixth line, be deleted and that the following be inserted in lieu of the deleted matter:

Our holding in this case that the District Court had jurisdiction of the case under the Lanham Act and Title 28, United States Code, Sec. 1338 (a) and (b), is based upon the fact that the unfair competition engaged in by the defendants as rightly found by the District Court, was substantially related to the proven infringement by defendants of the plaintiff's trademarks, which were duly registered under the Lanham Act.

Our decision is in accord with those of the Second, Third and Fifth Circuits in *American Auto Association* v. *Spiegel* (2 Cir.) 205 F.2d 771, *L'Aiglon Apparel* v. *Lana Lobell, Inc.*, (3 Cir.) 214 F.2d 649, and *Royal Lace Paper Works, Inc.* v. *Pest-Guard Products*, (5 Cir.) 240 F.2d 814.

Defendants' wrongful use of plaintiff's registered trademarks in its competition with plaintiff was itself unfair competition by defendants. *American Auto Association* v. *Spiegel*, supra. It had substantial economic effect upon plaintiff's national interstate business and the District Court had jurisdiction and substantial grounds to protect

plaintiff from defendants' infringement and unfair competition. We do not consider that this case raises the question and we do not hold that the Lanham Act would confer federal jurisdiction for unfair competition when there is no substantial related claim of infringement under the Act.

We find no error in the proceedings, opinion, findings, conclusions or judgment of the trial court. Affirmed.

The petition for rehearing is denied.

A true copy.

Attest:

Clerk, U. S. Court of Appeals, Eighth Circuit.

LIBRARY
SUPREME COURT, U. S.

Supreme Court, U.S.
MAY 12 1958
JOHN T. FEY, Clerk

In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 982

FRED W. STOVER,

Petitioner,

vs.

FARMERS' EDUCATIONAL AND COOPERATIVE UNION OF AMERICA, A Corporation,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

JAMES R. McMANUS,
610 Fleming Building,
Des Moines 9, Iowa,
Attorney for Petitioner.

INDEX

	Page
Citations To Opinion Below	2
Jurisdiction	2
Questions Presented	2
The Statutes Involved	3
Statement of the Case	4
Reasons for Granting the Writ	5
Conclusion	14
Appendix "A", Opinion of the Court of Appeals	15
Appendix "B", Statutes Involved	23

CASES CITED

Acme Chemical Co. vs. Dalkin, 61 F. Supp. 601, 606	10
American Auto Association vs. Spiegel, 2 Cir., 205 F. 2d 771	10
Application of Radio Corporation of America, 205 F. 2d 180	10
Blackhawk Hotels Co. vs. Bonfoey, 227 F. 2d 232	9, 13
Boylan vs. Detrio, 187 F. 2d 375	11
Christensen Engineering Co. vs. Westinghouse Air Brake Co., 135 F. 774, 782	11, 14
Dierks Lumber & Coal Co. vs. Barnett, 8 Cir., 221 F. 2d 695	9
Duell vs. Duell, 178 F. 2d 68	12
Esquire, Inc. vs. Maira, 101 F. Supp. 398	10
Eustace vs. Lynch, 80 F. 2d 652, 656	11
Food Fair Stores vs. Square Deal Market, 116 F. Supp. 617	10

CASES CITED—Continued

Pages

Gibbs vs. Buck, 308 U. S. 66 8

Gompers vs. Buck's Stove & Range Co., 221 U. S. 418, 448, 55 L. Ed. 197, 31 S. Ct. 492 11

In re Lyndale Farm, 186 F. 2d 723 10

Judelshon vs. Black, 64 F. 2d 116 11

KVOS vs. Associated Press, 299 U. S. 269 8

King Pharr Canning Corporation vs. Pharr Canning Co. (D. C. Ark.), 85 F. Supp. 150 10

L'Aiglon Apparel vs. Lana Lobell, Inc., 3 Cir., 214 F. 2d 649 10

Leman vs. Krentler-Arnold Co., 284 U. S. 488, 76 L. Ed. 389, 52 S. Ct. 238 11

McComb vs. Jacksonville Paper Co., 336 U. S. 187, 93 L. Ed 599, 69 S. Ct. 497 11

McNutt vs. General Motors Acceptance Corporation, 298 U. S. 178 8

Neva-Wet Corporation of America vs. Never Wet Processing Corporation, 227 N. Y. 163, 13 N. E. 755 10

Noland vs. Buffalo Insurance Company, 8 Cir., 181 F. 2d 735 9

Norstrom vs. Wahl, 7 Cir., 41 F. 2d 910, 914 14

Parker vs. United States (1 Cir.), 153 F. 2d 66 ..... 11, 12

Pendergrass vs. New York Life Insurance Company, 8 Cir., 181 F. 2d 136 9

Penfield vs. Securities & Exchange Com'n, 330 U. S. 585 ..... 12, 13

Royal Lace Paper Works, Inc. vs. Pest-Guard Products, 5 Cir., 240 F. 2d 814 10

CASES CITED—Continued

	Pages
Stauffer vs. Exley, 9 Cir., 184 F. 2d 962	5
United States vs. United Mine Workers, 330 U. S. 258, 91 L. Ed. 884, 67 S. Ct. 677	11, 12

STATUTES CITED

U. S. C. A., Title 15, §§ 1053, 1054	4
U. S. C. A., Title 28, § 1332	8
U. S. C. A., Title 28, § 1338	4, 6

In the
Supreme Court of the United States

OCTOBER TERM, 1957

—o—

No. .....

—o—

FRED W. STOVER,

Petitioner,

vs.

FARMERS' EDUCATIONAL AND COOPERATIVE UNION OF AMERICA, A Corporation,

Respondent.

—o—

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

—o—

Petitioner, Fred W. Stover, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit, entered in the above entitled cause on January 20th, 1958.

CITATIONS TO OPINIONS BELOW

The opinion of the Court of Appeals is reported in 250 F. 2d 809. A copy of it is printed in Appendix "A" hereto, infra, pages 15-24.

An earlier opinion of the Court of Appeals affirming an injunction issued by the District Court is reported in 247 F. 2d 809. The District Court's Findings of Fact, Conclusions of Law, Judgment and Decree, in that case, are appended in a footnote to 247 F. 2d 809, 810, and its opinion is reported in 141 F. Supp. 820. The Findings, Conclusions and Decree in the contempt case, involved here, are found at R. 64-70; its opinion at R. 61-64 and its Memorandum Opinion on Objections to Findings, Conclusions and Judgment, and Order overruling same, at R. 70-71.

JURISDICTION

The judgment of the Court of Appeals was entered on January 20, 1958. On April 21, 1958, by order signed by Justice Charles E. Whittaker, the time for filing this Petition for Writ of Certiorari was extended to and including May 6, 1958. The jurisdiction of this Court is invoked under 28 U. S. C., § 1254 (1).

QUESTIONS PRESENTED

1. Whether in a civil contempt proceeding in which the alleged contemnor is charged with violating an injunction issued in a suit to enjoin the infringement of registered trademarks, under the Lanham Act, Title 15,

U. S. C. A., Sections 1051-1127, the accused may be found guilty of contempt where the evidence shows only the use of trade names contained in the corporate titles of corporations and no use of trademarks, as such.

2. Whether a District Court of the United States may adjudge one guilty of contempt for the use of a trade name in the title of a corporation when the name is said to be an infringement upon a trademark registered under the Lanham Act, Title 15, U. S. C. A., Sections 1051-1127.

3. Whether in a civil contempt proceeding in the absence of proof of actual damages to a supposed contemnee from violation of an injunction a fine may be imposed upon the alleged contemnor.

4. Whether the courts below violated Rule 52 (a), Federal Rules of Civil Procedure, in disregarding the fact that contemnee failed to prove damages in a civil contempt proceeding as a condition precedent to imposing a fine upon the alleged contemnor.

5. Whether the Court of Appeals has decided federal questions in a way to conflict with prior applicable decisions of this Court (1) in finding petitioner was guilty of contempt in using a trade name which was the title of a corporate defendant, of which he was president, and that such use constituted an infringement of respondent's registered trademark, and, (2) in holding that in the original equity suit in which the injunction issued that jurisdiction was invoked and conferred by the provisions of Sections 1338 (a) and (b) of the Judiciary Act, when the District Court had made a finding that it had jurisdiction only under the Lanham Act, and, (3) in finding that it had authority and jurisdiction to make an original

finding of fact when its function and power in a case of this kind is purely appellate, as distinguished from original jurisdiction, and it had no right to substitute its findings with respect to issues of fact or jurisdictional questions for the findings of the trial court, and, (4) in approving the imposition of a fine in a civil contempt proceeding when there was no proof to establish any actual loss or damage suffered by the alleged contemnee as the result of the purported violation of an injunction.

—o—

STATUTES INVOLVED

The statutes involved are Title 15, U. S. C. A., Sections 1053 and 1054, and 28 U. S. C. A., Sections 1338 (a) and (b), which are printed in Appendix "B," infra pages 25-26.

—o—

STATEMENT OF THE CASE

Petitioner is president of two corporations entitled "Iowa Farmers Union" (formerly "Farmers Educational and Cooperative Union of America, Iowa Division"), and "Iowa Union Farmer Association." The latter publishes a newspaper formerly called "Iowa Union Farmer." After issuance of an injunction, hereafter mentioned, the name of the newspaper was changed to "U. S. Farm Union News."

Respondent owns two registered trademarks, a collective mark, "Union Farmer" and a service mark, consisting of the words "Farmers Union." The trademarks are registered under the Lanham Act.

The "Iowa Farmers Union" was affiliated with respondent until 1954. Thereafter, its corporate title was changed to its present name, by amendment to its articles.

Respondent brought suit against petitioner, the corporations referred to above and others, to enjoin the defendants named from an alleged infringement of plaintiff's trademarks which had been registered under the Lanham Act, Title 15, U. S. C. A., Sections 1051-1127. The trial court held that federal jurisdiction was conferred by the Lanham Act and issued an injunction enjoining defendants from infringement. (141 F. Supp. 820.)

Upon appeal, the Court of Appeals affirmed, setting out in a footnote the findings, conclusions and decree of the trial court which are appended to the opinion (247 F. 2d 809, at 810). In finding of fact, paragraph 3, the trial court stated "Jurisdiction is invoked under the Lanham Act." In the original opinion handed down by the Court of Appeals it was stated, that "On the trial of the case the court held that federal jurisdiction was conferred by the Lanham Act. * * *" (810).

A timely Petition For A Rehearing having been filed, a Supplemental Opinion was later announced by the Court of Appeals, modifying and withdrawing some of the original opinion (247 F. 2d 819). In that opinion, the court receded from the views originally expressed to the effect that it was in accord with the opinion in *Stauffer vs. Exley*, 9 Cir., 184 F. 2d 962, and announced that it did not intend to hold that the Lanham Act conferred original jurisdiction upon District Courts in actions for unfair competition and then aligned itself with the rules laid down by the Second, Third and Fifth Circuits, declaring a rule

contrary to that stated by the Ninth Circuit in *Stauffer vs. Exley*, supra.

In that Supplemental Opinion the Court of Appeals stated that it was holding (819) that "the District Court had jurisdiction of the case under the Lanham Act and Title 28, United States Code, 1338 (a) and (b)." The trial court had made a finding that it had jurisdiction under the Lanham Act, only, and in its conclusions of law, paragraph 2, had stated: "This court has jurisdiction under the Lanham Act (Sections 114 (1114) and 1121, Title 15, U. S. Code) to enjoin the infringement of plaintiff's said marks by the defendants herein." (247 F. 2d 812.)

Nevertheless, the Court of Appeals attempted to make the finding, for the first time in the litigation, that the trial court had jurisdiction "under the Lanham Act and Title 28, United States Code, § 1338 (a) and (b) * * *." That finding was made in the new matter inserted in the opinion in the Supplemental Opinion handed down following the filing of the Petition for a Rehearing (which was denied).

The original complaint did allege that the District Court had jurisdiction under the Lanham Act, claimed jurisdiction by reason of diversity of citizenship and a claim in excess of $3,000.00, § 1332, Title 28, U. S. C. A., and under Section 1338, Title 28, U. S. C. A., pleading a cause of action for relief from unfair competition in a cause joined with a substantial and related claim under the trademark law. The trial court, however, in his findings limited the jurisdictional question to the Lanham Act, only. Apparently, upon the trial of the original equity

case the plaintiff abandoned its claim for unfair competition and relied solely upon the Lanham Act. The appellate court revived and resurrected Title 28, Sections 1338 (a) and (b) to buttress the claim of unfair competition.

The decree in the original equity suit, which petitioner was charged with violating, related only to the use of trademarks. Trade names were not mentioned in that decree. In the contempt proceeding respondent relied upon proof of the use of the trade names contained in the titles of the corporations of which petitioner was president and the use of the words "U. S. Farm Union News" to show a violation of the injunction. The evidence established that petitioner never used the registered trademarks of respondent at any time or place. The trial court and Court of Appeals held petitioner in contempt.

Petitioner testified that the assets of the Iowa Farmers Union belonged to its members. It was never a subsidiary of respondent. The assets of the Iowa Union Farmer Association are owned by members of that corporation. The boards and members of the two corporations are separate and distinct but in some cases membership overlaps. The Iowa Union Farmers Association has no connection with the respondent. It publishes the "U. S. Farm Union News," the newspaper. The corporation Iowa Union Farmers Association had used that corporate title since 1952 (R. 48, 49).

The only evidence bearing upon the question of damages suffered by respondent by reason of a violation of the injunction was testimony to the effect that since the original injunction decree of June 13, 1956, respondent had spent about $37,000.00 or $38,000.00 on its organiza-

tion work in Iowa, in addition to publications, news letters and other materials. Petitioner contends proof of what was spent does not prove damages or that respondent did not get value for what it spent, in Iowa.

———o———

REASONS FOR GRANTING THE WRIT

We have pointed out that the complaint asserted federal jurisdiction was conferred (1) by reason of the Lanham Act, (2) because of diversity jurisdiction, under Section 1332, Title 28, U. S. Code, and, (3) by reason of the fact that plaintiff respondent's claim in the original equity suit was joined with a substantial and related claim under the trademark laws, under Section 1338 (b), Title 28, U. S. C.

The trial court held that jurisdiction was conferred under the Lanham Act, only. Common-law diversity jurisdiction, under Section 1332, Title 28, was wholly lacking because of a failure to prove the jurisdictional amount. *McNutt vs. General Motors Acceptance Corporation*, 298 U. S. 178; *KVOS vs. Associated Press*, 299 U. S. 269; *Gibbs vs. Buck*, 308 U. S. 66. In the original opinion of the Court of Appeals of August 5, 1957, it was stated in the second paragraph that the trial court had held that federal jurisdiction was conferred by the Lanham Act. There was no reference to any other source of jurisdiction in the trial court's findings, conclusions or decree, except the Lanham Act. Likewise, there was no reference to any other basis for the exercise of federal jurisdiction in the original opinion of the Court of Appeals filed on August 5, 1957. It was not until the filing of the

Supplemental Opinion, September 30, 1957, modifying the original opinion in the injunction suit, that it was suggested by the Court of Appeals that, in addition to the Lanham Act, jurisdiction was conferred by Section 1338, Title 28, U. S. Code.

Petitioner contends the Court of Appeals had no power to substitute its findings for those of the trial court on fact questions decided by the District Court. *Blackhawk Hotels Company vs. Bonfoey*, 227 F. 2d 232. No attack was made by anyone on the trial court's findings concerning the jurisdictional question. If they were not attacked, had adequate evidentiary support and were not induced by an erroneous view as to the law, they were conclusive. *Pendergrass vs. New York Life Insurance Co.*, 8 Cir., 181 F. 2d 136; *Noland vs. Buffalo Insurance Co.*, 8 Cir., 181 F. 2d 735; *Dierks Lumber & Coal Co. vs. Barnett*, 8 Cir., 221 F. 2d 695.

Petitioner contends that the use of the trade names and the name of the newspaper, "U. S. Farm Union News," did not violate the injunction against the infringement of respondent's registered trademarks "Union Farmer" and "Farmers Union" under the provisions of the Lanham Act, Title 15, Sections 1051-1127. The trial court in so many words recognized that "a trade-name is descriptive of the manufacturer or dealer himself and applies to a business and its good will, whereas a trademark in its technical sense, is applicable to vendible commodities." (R. 63.)

The Lanham Act does not authorize the registration of tradenames and they are not covered by its provisions with regard to trademarks. Sections 1053, 1054, 1126, 1127,

Title 15, U. S. C.; *King Pharr Canning Corporation vs. Pharr Canning Co.* (D. C. Ark.), 85 F. Supp. 150; *Esquire, Inc. vs. Maira*, 101 F. Supp. 398. In the Esquire case, the Court said: "Defendant's use of the name 'Esquire Shop' in connection with his men's clothing store is no technical infringement of plaintiff's trademark 'Esquire.'"

The courts recognize that trademarks and trade names are distinct concepts. *Acme Chemical Co. vs. Dubkin*, 61 F. Supp. 601, 606; *Nera-Wet Corporation of America vs. Never Wet Processing Corporation*, 277 N. Y. 163, 13 N. E. 755.

The Lanham Act does not confer jurisdiction as to a tradename suit between citizens of the U. S. A. in the absence of complete diversity jurisdiction. *American Auto Association vs. Spiegel*, 2 Cir., 205 F. 2d 771; *L'Aiglon Apparel vs. Lana Lobell, Inc.*, 3 Cir., 214 F. 2d 649; *Royal Lace Paper Works, Inc. vs. Pest-Guard Products*, 5 Cir., 240 F. 2d 814.

No product or merchandise was involved in the case at bar. Only trade names and the name of the newspaper were used. The issue is whether trade names are afforded protection by the Lanham Act. The words "trade names" appear only in Sections 1127, the definition section, and 1126, dealing with aliens and foreign conventions and treaties. The act makes no provision for registering trade names. The petitioner was not guilty of contempt by reason of the use of the trade names. *Food Fair Stores vs. Square Deal Market*, 116 Fed. Supp. 617; *In re Lyndale Farm*, 186 F. 2d 723; *Application of Radio Corporation of America*, 205 F. 2d 180.

The decision below is in conflict with prior decisions of this Court in that it sustained the finding of the District Court that a fine could be imposed in a civil contempt case in the absence of proof by the contemnee that it suffered actual damage by reason of a violation of the injunction issued in the original equity case. The only proof adduced by the plaintiff respondent in that connection was evidence of one witness as to the amount spent for organization expense between the date of the injunction and the date of the contempt hearing.

The rule has been settled since the Gompers case that in a civil contempt proceeding a fine may only be imposed as compensation for special injury for actual loss sustained by plaintiffs in an injunction suit. *Gompers vs. Buck's Stove & Range Co.*, 221 U. S. 418, 448, 55 L. Ed. 197, 31 S. Ct. 492; *United States vs. United Mine Workers*, 330 U. S. 258, 91 L. Ed. 884, 67 S. Ct. 677; *McComb vs. Jacksonville Paper Co.*, 336 U. S. 187, 93 L. Ed. 599, 69 S. Ct. 497; *Eustace vs. Lynch*, 80 F. 2d 652, 656; *Parker vs. U. S.*, 153 F. 2d 66.

Petitioner contends the opinion of the court below was in conflict with those cases which hold that a fine imposed in a civil contempt proceeding must not exceed the actual loss suffered by the contemnee and the rules laid down in *Leman vs. Krentler-Arnold Co.*, 284 U. S. 488, 76 L. Ed. 389, 52 S. Ct. 238; *Boylan vs. Detrio*, 187 F. 2d 375; *Christensen Engineering Co. vs. Westinghouse Air-Brake Co.*, 135 Fed. 774, 782; *Judelshon vs. Black*, 64 F. 2d 116.

Evidence as to what respondent spent fell far short of proving loss or damage. Since the Gompers case such

proof has been regarded as essential before a fine may be imposed in a civil contempt case.

In recent cases, applying the tests laid down in the Gompers case, we have, refusal to obey a subpoena duces tecum, *Penfield vs. Securities & Exch. Com'n*, 330 U. S. 585, and refusal to obey a court order to appear before a master for examination, *Duell vs. Duell*, 178 F. 2d 68, which have been held to be civil contempts, and judgments appropriate only to criminal proceedings have been reversed.

The law only authorizes the court to award plaintiff in a proceeding of this kind such damages as it proves it suffered, due to a violation of the injunction decree out of which the contempt charges grew. In a civil contempt, the fine should be payable to plaintiff. In the case at bar it was required to be paid to the clerk, not the respondent. The cases recognize that a fine is imposed in a civil contempt for the purpose of making defendant pay compensation for the loss caused to plaintiff by a violation of the decree and the fine must be based upon proof of the damage actually sustained. *United States vs. United Mine Workers*, 330 U. S. 258, at 304, 67 S. Ct. 677, at 701, 91 L. Ed. 884. *Parker vs. U. S.*, 1 Cir., 153 F. 2d 66, at 71.

Under Rule 52 (a), Federal Rules of Civil Procedure, the trial court was required to make and file findings of fact, as the proceeding was tried to the court. The trial court made no finding to the effect that respondent had suffered any loss or damage as the result of any violation of the injunction of June 13, 1956, by petitioner. Apparently, the trial judge believed no damages

were proven. When objections were raised that in the absence of proof of damages he had no legal right to impose the proposed fine, payable to the Clerk, the trial judge in his Memorandum Opinion of April 25th, 1957, (R. 70-71), took the position that the proceeding partook partly of the nature of a criminal proceeding for contempt, referring to Sections 401 and 402, Title 18, U. S. C. A., relating to criminal contempts. He overlooked the prohibition against "scrambling" the two kinds of contempts announced in *Penfield Co. vs. Securities & Exchange Com'n*, 330 U. S. 585. But he made no finding that respondent had sustained damage. It was conceded by counsel for respondent, in open court, in the District Court and Court of Appeals, that this proceeding was a civil contempt, as distinguished from a criminal contempt, proceeding. Had this been a law action, tried to a jury, the trial court would have been obliged to direct a verdict for petitioner, on account of the failure of respondent to prove damages. As the trial court found no damages, the appellate court had no power to make original findings of fact as to damages. *Blackhawk Hotels Company vs. Bontocy*, 8 Cir., 227 F. 2d 232. This was another instance of the Court of Appeals attempting to substitute its findings for those of the *nisi prius* court. In doing so, the spirit and letter of Rule 52 (a) were disregarded. As there was no proof of damages, in any event, the cause should have been reversed.

In setting aside the trial court's finding as to jurisdiction the Court of Appeals forgot what it said in *Blackhawk Hotels Co. vs. Bontocy*, 227 F. 2d 232, where it stated: "The jurisdiction of this court is appellate and it has no right to retry the issues of fact or substitute

its judgment with respect to such issues for that of the trial court." The Lanham Act does not apply to the use of trade names. The action of the court below has violated Rule 52 (a) of the Rules of Civil Procedure in such a way as to call for the exercise of this Court's supervisory corrective authority. There can be no "scrambling" of contempt proceedings under the rule announced in the Penfield case. It was conceded below that this was a civil contempt proceeding. Therefore, the fine which was imposed on petitioner should not have been approved in the absence of evidence respondent actually suffered loss, and the amount thereof. Otherwise, the amount of the fine would be based on conjecture and be no more than an arbitrary decision. *Norstrom vs. Wahl*, 7 Cir., 41 F. 2d 910, 914; *Christensen Engineering Co. vs. Westinghouse Air Brake Co.*, 135 Fed. 774, at 782.

CONCLUSION

For the foregoing reasons, it is submitted that this petition should be granted.

Respectfully submitted,

JAMES R. MCMANUS,

610 Fleming Building,
Des Moines 9, Iowa,

Attorney for Petitioner.

APPENDIX "A"

UNITED STATES COURT OF APPEALS

EIGHTH CIRCUIT

No. 15833

January 20, 1958

FRED W. STOVER

Appellant,

vs.

FARMERS' EDUCATIONAL AND COOPERATIVE UNION OF AMERICA,

Appellee.

James R. McManus, *Attorney for Appellant*,
Des Moines, Iowa
Frederic M. Miller,
Des Moines, Iowa,
Sherwin J. Markman,
Des Moines, Iowa,
Charles F. Brannan,
Denver, Colorado, *Attorneys for Appellee*

Before Gardner, Chief Judge, and Woodrough and Vogel, Circuit Judges

Woodrough, Circuit Judge.

1. The judgment here appealed from finds that appellant guilty of contempt and imposes a fine upon him for violating an injunction issued in this case in favor of Farmers' Educational and Cooperative Union of Amer-

ica, here referred to as plaintiff, against appellant and others, as defendants, on June 11, 1956, in accord with the opinion of the district court, reported in *Farmers' Educational & Cooperative Union of America vs. Farmers Educational & Cooperative Union of America, Iowa Division*, 141 F. Supp. 820. Appeal was taken by the defendants, including the appellant herein, from the injunctional decree and this Court affirmed it in all respects, as reported in *Iowa Farmers Union v. Farmers' Educational & Cooperative Union*, 247 F. 2d 809, and we caused a copy of the judgment and decree of injunction, together with material findings and conclusions of the district court to be appended and published with our opinion.

As fully appears in those reports, the appellant, Fred W. Stover, is the president and principal managing officer of the two Iowa Corporations which operated for years under a charter from the plaintiff and were identified with the plaintiff by using its registered trade marks, service marks, and symbol in publishing a newspaper and rendering the other services to farmers for which the plaintiff, and the corporations to which it granted its franchise, were organized. In March of 1954, the charter of the two corporations was revoked by the parent corporation and their connection with the plaintiff was duly and lawfully terminated. But at the instigation and under the direction of this appellant, they continued their operations, as they had carried them on before under their franchise from plaintiff, and infringed the plaintiff's trade marks and symbol, and in the same connection, engaged in unfair competition against the plaintiff.

The decree, issued June 13, 1956, enjoining them from continuing their wrongful infringement and unfair competition appears in words and figures at 247 F. 2d 809, 812-813.

On September 10, 1956, the plaintiff filed application for citation for contempt in the action against appellant, charging him with deliberately acting in violation of the injunction and praying that he be held in contempt of court and punished therefor.

Issues were joined and the court found, on the trial, that the appellant here had continued to do that which he had been enjoined from doing and was guilty of contempt and subject to penalty. The opinion of the court is reported at 150 F. Supp. 422. Its findings and conclusions (omitting some repetitions) included the following:

> "3. Defendant, Fred W. Stover, is the President and principal managing officer of the Iowa Farmers' Union and the Iowa Union Farmer Association. He publishes and is an editorial contributor on the newspaper now known as 'U. S. Farm Union News,' formerly known as 'Iowa Union Farmer.' He is in charge of the activities of said Iowa Farmers Union and said Iowa Union Farmer Association, including the solicitation of subscriptions, memberships, dues and contributions and is in charge of the records and headquarters of said corporation. Not only is he bound to comply with the injunction, quoted in Paragraph 1 hereof, supra, but is under the duty to so supervise and direct the affairs of said corporation that they likewise in their activity would obey said injunction."
>
> "4. The continued use of the names, 'Iowa Farmers Union' and 'Iowa Union Farmer Associations,' by said corporations, and in particular by the defend-

ant, Fred W. Stover, has created confusion and misunderstanding in the community and directly violates the injunction. The name, 'U. S. Farm Union News,' is so similar to 'Iowa Union Farmer' that it is deceptive and confusing and creates confusion and misunderstanding among the farm people of Iowa."

"5. Except for the change of the name of the newspaper from 'Iowa Union Farmer' to 'U. S. Farm Union News,' defendant Fred W. Stover, as president of defendants, Iowa Farmers Union and Iowa Union Farmer Ass'n, has conducted the affairs of both of said corporations since the entry of said decree the same as he did prior thereto. There can be no reasonable doubt or question that defendant, Fred W. Stover, violated the injunction herein. He is guilty of contempt and is subject to penalty therefor."

"Conclusions of Law"

"1. As stated above, Judge Harper found that defendants were infringing plaintiff's registered marks and enjoined them from further infringement thereof. Except for the change in the name of the defendants' newspaper from 'Iowa Union Farmer' to 'U. S. Farm News,' defendants, including and under supervision of the defendant, Fred W. Stover, have continued their operations since the entry of the injunction the same as they had prior thereto. There has been no substantial effort to comply with the injunction. Obviously, defendant, Fred W. Stover, continued to do that which he was enjoined from doing. He is guilty of contempt and is subject to penalty."

"2. The name of a newspaper is in the nature of a trade mark. The law of trade names is identical with that of trade marks. Rights that may accrue in a trade name are by reason of the fact that such trade names become in law a trade mark. While a trade name is not strictly a trade mark, it is generally governed as to its use by the same rules as a trade mark."

"3. Plaintiff has registered its marks, 'Union Farmer' and 'Farmers Union.' Judge Harper's findings and conclusions adjudicated that defendants' use of the trade name, 'Iowa Farmers Union' infringed plaintiff's registered mark, 'Farmers Union' and that defendants' use of the trade name 'Iowa Union Farmer Association' infringed plaintiff's registered mark 'Union Farmer.' The adjudications thus made are not subject to collateral attack in these proceedings. Defendant, Fred W. Stover, as president of the Iowa Farmers Union, and as president of the Iowa Union Farmer Association, has done nothing whatever to terminate said infringements by said corporation. He is clearly guilty of contempt. In continuing to supervise and direct the activities of said two corporations, defendant, Fred W. Stover, has clearly violated the injunction."

"4. The change of the name of the newspaper from 'Iowa Union Farmer' to 'U. S. Farm Union News' does not avoid infringement of plaintiff's registered marks. The confusion which has existed heretofore is bound to continue and to reoccur because of the similarity of the name to plaintiff's marks, particularly when the type of subscribers to defendants' newspaper and to plaintiff's newspapers is considered."

The judgment was as follows:

"Judgment and Decree"

"It is hereby ordered, adjudged and decreed that the defendant, Fred W. Stover, is found to be in contempt of court for violation of the injunction entered in this cause on June 11, 1956, and accordingly is ordered to forthwith pay to the clerk of this court a fine of one thousand dollars ($1,000.00), provided, however, that, if, within ten days after the entry of this judgment herein, he procures the discontinuance of the corporate names, Iowa Farmers Union and Iowa Union Farmer Association, procures the

discontinuance of the name, U. S. Farm Union News, and of the reference to the fact that it was formerly Iowa Union Farmer, procures the removal of the sign, 'Iowa Farmers Union,' over the entrance to the place of business of said corporation, ceases to solicit funds, contributions and dues for either an Iowa Farmers Union or an Iowa Union Farmer Association, and otherwise complies with the injunction herein, then said fine shall be reduced to five hundred dollars ($500.00)."

"It is further ordered that judgment be entered against the defendant, Fred W. Stover, for the costs of this proceeding."

Subsequent to the entry of the judgment, the court overruled objections to its findings, conclusions and judgment. It cited 18 U. S. C. A. at 401, as follows:

"A court of the United States shall have power to punish by fine or imprisonment, *at its discretion*, (emphasis mine) such contempt of its authority, and none other, as—

* * * * * *

"(3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command."

The court said, "quite clearly, the contemnor in this case was charged with disobedience to a lawful decree heretofore entered in a proceeding to which the contemnor was a party."

Supersedeas was allowed the appellant and on this appeal he asserts error in his conviction and fine and argues as points for reversal that: (1) the decree of injunction entered in this action on June 13, 1956, did not enjoin the defendants from the use of the trade names contained in the titles of the corporate defendants so that his conduct of carrying on the same business as before

the injunction and using "Farmers Union" and "Union Farmers," was not covered by the injunction and; (2) that if civil contempt was established, no damages were proven and no fine could be assessed against him.

1. As to the injunction.

It adjudicates the right of the plaintiff to the exclusive use of "'Union Farmer' in connection with the printing, publication and distribution of any newspaper or like periodical and to the exclusive use of the words 'Farmers Union' * * * in connection with dissemination of information pertaining to farming and related industries, and particularly information in connection with cooperatives to aid the farmer in marketing his produce, information relating to educational and entertainment programs, for farmers and their families, information as to proposed legislation that directly or indirectly may affect those engaged in farming and related industries, and services to and for the farmer relating to storage of produce, the making of mortgage loans, the brokerage of produce and livestock, the sale of insurance, and the servicing of farm equipment, and from in any way, directly or indirectly attempting to compete with the plaintiff in its use of said trade marks." (150 F. Supp. 423.) The trial court found that appellant, acting as president of "Iowa Union Farmer Association," after the issuance of the injunction against him, supervised the publication and distribution of a newspaper entitled, U. S. Farm Union News (formerly Iowa Union Farmer), denominated the May-June, 1956, issue of said newspaper and solicited contributions for the Iowa Union Farmer Association and engaged in unfair competition against the plaintiff.

The findings are fully supported by the evidence and in turn support the court's conclusion that appellant violated the injunction. The slight alterations in the name of the newspaper appellant published, changing "Farmers" to "Farm" but retaining "Union" and adding "formerly Iowa Union Farmer" were obviously to circumvent the letter of the injunction while adhering to the infringement and unfair competition.

The argument that appellant may so continue his invasion of the trade mark rights of the plaintiff despite the injunction that was issued against him, after full hearing and fair trial is without merit.

It is true, the injunction prohibits misuse of "marks" and "words" and does not say corporate names. But the Lanham Act includes "names" and "words" in its definition of trade marks and service marks, 15 U. S. C. A. at 1127, and the injunction in this case was sufficiently phrased and worded to apprise the appellant of the prohibition against his infringement and unauthorized and unfair competition against plaintiff. It is immaterial that the injunction did not include general prohibition of any use of the corporate names of the defendants. It plainly and unambiguously forbade the appellant to use the registered words that had acquired secondary meaning to intrude upon and take away the business that belonged to plaintiff. His violations were properly held to be wilful and in contempt of court.

Appellant has cited *L. E. Waterman Co. v. Modern Pen Co.*, 235 U. S. 88, 96, 35 S. Ct. 91, 93, 59 L. Ed. 142; *L'Aiglon Apparel, Inc., v. Lana Lobell, Inc.*, 3 Cir., 214 F. 2d 649; *American Auto Association v. Spiegel*, 2 Cir.,

205 F. 2d 771; and *King Pharr Canning Corporation v. Pharr Canning Co.*, D. C. Ark., 85 F. Supp. 150, as tending to support his contention that the injunction herein does not cover his conduct. We do not find such support in the cases cited.

2. As to the proof of damage to the plaintiff.

(2) It was clear to this court on the appeal from the decree of injunction that the wrongful conduct of this appellant and his co-defendants in infringing the plaintiff's marks and engaging in unfair competition against plaintiff, in connection with such infringement, "greatly increases the cost and difficulty plaintiff encounters in its undertaking to re-establish the Iowa division which is essential to its national organization and interstate operation," and on the trial for the contempt, it was shown that after the injunction was issued, the plaintiff spent about thirty-seven or thirty-eight thousand dollars on its organization work in Iowa, in addition to publications, news letters and other materials. Specific instances where appellant's activities interfered with or prevented organization meetings planned by plaintiff were proved. [illegible] it is true that the evidence does not afford means to compute mathematically the precise amount of plaintiff's damage, and indeed the amount is not susceptible of such determination, the evidence leaves no doubt that damage far beyond the amount of the fine, that was imposed was directly caused the plaintiff by appellants' wrongful conduct. Undoubtedly the cost of attorneys services that was directly caused were of value greater than the fine.

In *United States v. Onan*, 8 Cir., 190 F. 2d 1, 9, this

court said as to a fine imposed for civil contempt:

> "* * * The precise amount of actual damage was doubtless not susceptible of determination but the flagrant and wanton abuse by appellants of judicial process in issuing and serving these garnishee summonses on the various banks in which defendants had large deposits subjected defendants to substantial expense in retaining counsel and in obtaining an order quashing the summonses. The evidence was all before the trial court and there was no evidence offered by appellants to the contrary. We think a fine of $2500.00 as reimbursement for the damages suffered by appellees was sustained by substantial evidence."

No term of imprisonment was imposed and the fine was upon conditions affording the appellant a liberal locus poenitentiae.

It is argued that matters this appellant caused to be published, after the issuance of the injunction, in the newspaper of the Iowa Union Farmer Association reflecting upon the court and its issuance of the injunction and declaring that "the paper" would continue, notwithstanding the injunction, was privileged matter under the first amendment to the Federal Constitution and afforded no basis for the finding of contempt. But it does not appear that the court rested its findings of contempt upon that phase of appellant's publications and no discussion of it appears to be called for here.

We find no error in the proceedings and judgment and affirm the judgment with direction that the alternative privilege accorded the appellant be extended thirty days from the entry hereof.

Affirmed.

APPENDIX "B"

STATUTES INVOLVED

28 U. S. C. A., § 1338

(a) The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to patents, copyrights and trade-marks. Such jurisdiction shall be exclusive of the courts of the states in patent and copyright cases.

(b) The district courts shall have original jurisdiction of any civil action asserting a claim of unfair competition when joined with a substantial and related claim under the copyright, patent or trade-mark laws.

15 U. S. C. A. § 1053

Subject to the provisions relating to the registration of trade-marks, so far as they are applicable, service marks used in commerce shall be registrable, in the same manner and with the same effect as are trade-marks, and when registered they shall be entitled to the protection provided in this chapter in the case of trade-marks, except when used so as to represent falsely that the owner thereof makes or sells the goods on which such mark is used. The Commissioner may establish a separate register for such service marks. Applications and procedure under this section shall conform as nearly as practicable to those prescribed for the registration of trade-marks.

15 U. S. C. A. § 1054

Subject to the provisions relating to the registration of trade-marks, so far as they are applicable, collective

and certification marks, including indications of regional origin used in commerce, shall be registrable under this chapter, in the same manner and with the same effect as are trade-marks, by persons, and nations, States, municipalities, and the like, exercising legitimate control over the use of the marks sought to be registered, even though in possessing an industrial or commercial establishment and when registered they shall be entitled to the protection provided in this chapter in the case of trade-marks, except when used so as to represent falsely that the owner or a user thereof makes or sells the goods or performs the services on or in connection with which such mark is used. The Commissioner may establish a separate register for such collective marks and certification marks. Applications and procedure under this section shall conform as nearly as practicable to those prescribed for the registration of trade-marks.

LIBRARY
SUPREME COURT, U. S.

Office - Supreme Court, U.S.
FILED
MAY 21 1958
JOHN T. FEY, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 982.

FRED W. STOVER,
Petitioner,

vs.

FARMERS' EDUCATIONAL AND COOPERATIVE UNION OF AMERICA, a Corporation,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

FREDERIC M. MILLER,
THOMAS B. ROBERTS and
SHERWIN J. MARKMAN,
400 Empire Building,
Des Moines 9, Iowa,
CHARLES F. BRANNAN,
Denver, Colorado,
Attorneys for Respondent.

INDEX

Opinions Below	1
Questions Presented	2
Statement of the Case	4
Reasons for Denying the Writ	16
Conclusion	22

CITATIONS

Cases

Anheuser-Busch, Inc., v. *Power City Brewery*, 28 Fed. Supp. 740	19
Atlas Diesel Engine Corp. v. *Atlas Diesel School*, 60 Fed. Supp. 429	19
Book of the Month Club, Inc., v. *Childrens, etc., Book of the Month Club, Inc.*, 112 Fed. Supp. 151	18
Brinkman v. *Laurette Mfg. Co.*, 21 Fed. 607	20
Dad's Root Beer Co. v. *Atkin*, 90 Fed. Supp. 477	20
Dad's Root Beer Co. v. *Doc's Beverages*, 94 Fed. Supp. 121, aff. 193 F. 2d 77	20
Esquire, Inc., v. *Maira*, 101 Fed. Supp. 398	19
Esso, Inc., v. *Standard Oil Co.*, (C.C.A. 8) 98 F. 2d 1	19
Fred W. Stover v. *Farmers Ed. and Coop. Union*, 141 Fed. Supp. 820	1
General Fin. Loan Co. v. *Gen. Loan Co.*, (C.C.A. 8) 163 F. 2d 709	19
Gompers v. *Buck's Stove and R. Co.*, 221 U.S. 418, 55 L. Ed. 797, 31 S. Ct. 492	17
Household Fin. Corp. v. *Gen. Household Credit Corp.*, 49 Fed. Supp. 541	19
Howat v. *Kansas*, 258 U.S. 181, 66 L. Ed. 550, 42 S. Ct. 277	17
Iowa Farmers Union v. *Farmers Ed. and Coop. Union*, (C.C.A. 8) 247 F. 2d 809	1, 4

Lane Bryant, Inc., v. *Glassman*, 95 Fed. Supp. 320 18

Laskowitz v. *Marie Designer*, 119 Fed. Supp. 541 18

Layton Pure Food Co. v. *Church*, (C.C.A. 8) 182 Fed. 24 19

Lever Bros. v. *Pasfield*, 88 Fed. 484 20

Little Tavern Shops v. *Davis*, (C.C.A. 4) 116 F. 2d 903 19

Maggio v. *Zeitz*, 333 U.S. 56, 92 L. Ed. 476, 68 S. Ct. 401 17

Mandee Fabrics, Inc., v. *Slifka*, 97 Fed. Supp. 187 18

Nat. Lead Co. v. *Wolfe*, (C.C.A. 9) 223 F. 2d 195 18

Queen Mfg. Co. v. *Ginsberg & Bros.* (C.C.A. 8) 25 F. 2d 284 19

Rice & Hutchins, Inc., v. *Vera Shoe Co., Inc.*, (C.C.A. 2) 290 Fed. 124 19

Robert C. Winn Enterprises v. *Persinger*, (C.C.A. 9) 229 F. 2d 154 18

Rossmann v. *Garner*, (C.C.A. 3) 211 Fed. 401, 406 19

S. S. Kresge Co. v. *Winget Kickernick Co.*, (C.C.A. 8) 96 F. 2d 978 19

Sterling Brew. v. *Cold Spring Brew. Corp.*, 100 Fed. Supp. 412 19

Stix, Baer & Fuller Co. v. *A. J. Sweet Co.*, (C.C.A. 8) 49 F. 2d 598 20

Stover v. *Farmers Ed. and Coop. Union*, (C.C.A. 8) 250 F. 2d 809 1

Sunbeam Corp. v. *Sunbeam Furn. Corp.*, 134 Fed. Supp. 614 18

Swift & Co. v. *Brenner*, 125 Fed. 826 20

United Drug Co. v. *Obear-Nester Glass Co.*, (C.C.A. 8) 111 F. 2d 997 19

U. S. v. *United Mine Workers*, 330 U.S. 256, 91 L. Ed. 884, 67 S. Ct. 677 17

TEXTS

37 American Jurisprudence 517 17
Anno. 12 A.L.R.2d 1107 17
3 Callman, "Unfair Comp. and Trade Mark", 1535, Sec. 82.2(b)(3) 20

STATUTES AND RULES

Sections 1114 and 1121, Title 15, U.S. Code (Lanham Act) 3, 5, 6, 10, 14, 17, 21
Sections 1338(a) and (b), Title 28, U.S. Code 3, 10, 17, 21
Rule 19 of the Rules of the U.S. Supreme Court 2
Rule 23 of the Rules of the U.S. Supreme Court 2

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957.

No. 982.

FRED W. STOVER,
Petitioner,

vs.

FARMERS' EDUCATIONAL AND COOPERATIVE UNION OF AMERICA, a Corporation,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

OPINIONS BELOW.

The opinion of the Circuit Court of Appeals, review of which is sought herein, is reported at 250 F.2d 809. Said opinion affirmed a judgment finding petitioner, Fred W. Stover, in contempt of an injunction issued pursuant to an opinion reported at 141 Fed. Supp. 820, which injunction was affirmed on appeal by an opinion reported at 247 F.2d 809, which in turn sets forth in footnotes the Findings of Fact, Conclusions of Law and Decree of the trial court in the injunction case. Obviously, the adjudications, made in the injunction case, cannot be the subject of collateral attacks in this contempt case.

QUESTIONS PRESENTED.

Introductory.

It is the contention of respondent that no substantial questions are presented herein because petitioner, Fred W. Stover, has failed to meet the requirements of Rules 19 and 23 of the Rules of this Court.

Rule 19 provides that a writ of certiorari will issue only if special and important reasons exist. There are no such reasons herein. Also, when due consideration is given to the adjudications made in the injunction case, which cannot be attacked herein, and to the facts actually shown by the record herein, there is no basis whatever for a writ of certiorari being issued herein.

Rule 23 of the Rules of this Court provides that failure of a petitioner to present with accuracy, brevity and clearness, whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying his petition. The petition herein is so inaccurate and confusing that it should be denied for that reason alone.

1. As to Petitioner's Question No. 1.

In petitioner's Question No. 1, it is asserted that the evidence shows only the use of trade names and no use of trade marks, as such. That is a gross misstatement of the evidence. In the injunction case, defendants admitted infringement of the plaintiff's registered trade marks and that such infringements would continue unless enjoined. In this contempt case, defendant, Fred W. Stover, admitted that he conducted his affairs after the injunction was issued substantially as he did before. He clearly admitted violation of the injunction by continuing to infringe said

trade marks. In the injunction case, it was also adjudicated that the use of a trade name that contains a trade mark infringes said trade mark. That adjudication is not subject to attack in this contempt case.

2. As to Petitioner's Question No. 2.

In petitioner's Question No. 2, petitioner again attempts to challenge the adjudication that the use of a trade name which contains a trade mark infringes said trade mark. That adjudication was made in the injunction case and is not open to attack at this time.

3. As to Petitioner's Question No. 3.

In petitioner's Question No. 3, it is asserted that there is no evidence of damage from the infringement of the trade marks herein. It was adjudicated in the injunction case that substantial damage resulted from the wrongful interference with the efforts to re-establish an Iowa Division. That adjudication cannot be attacked now. In this contempt case, the evidence showed that said damage is still being suffered.

4. As to Petitioner's Question No. 4.

In petitioner's Question No. 4, it is again asserted that there is no proof of damage. The comment as to Question No. 3, *supra*, applies to Question No. 4.

5. As to Petitioner's Question No. 5.

In petitioner's Question No. 5, petitioner challenges four adjudications, to-wit: (1) the use of a trade name that contains a trade mark infringes said trade mark; (2) jurisdiction in the injunction case was conferred by Section 1338, (a) and (b), of the Judicial Code as well as by the Lanham Act; (3) the Court of Appeals had the power to deter-

mine item (2), *supra;* (4) the finding of damage from in fringement of the trade marks. The first three adjudica tions were made in the injunction case and are not sub ject to attack herein. The fourth adjudication was mad originally in the injunction case. The evidence in this con tempt case shows that said damage is still being suffered

By reason of the foregoing, it is respectfully submitte that there is no question presented herein which could pos sibly warrant the issuance of a writ of certiorari herein

STATEMENT OF THE CASE.

The injunction decree, which petitioner, Fred W Stover, has violated, was entered pursuant to fourteen Find ings of Fact and six Conclusions of Law, which adjudica tions are particularly important herein because they ar not subject to challenge at this time. Said Findings of Fact Conclusions of Law, and Decree are set forth in footnotes t the Opinion of the Court of Appeals which affirmed sai decree (247 F.2d 309) at pages 810 to 813 of 247 F.2d. The are also set forth at pages 13 to 19 of Appellee's Supple mental Record in the Court of Appeals in this contemp case and also at pages 34 to 38 of said Supplemental Rec ord.

Essentially, the fourteen Findings of Fact were a follows:

1. The injunction case was brought against certai corporate and individual defendants to enjoin the infringe ment by them of three trade marks, one, a symbol, con sisting of a plow, a rake and a hoe, surrounded by a circle next, a collective mark for goods consisting of the word "Union Farmer", and third a service mark consisting of the words "Farmers Union". (S. R. 13, 14).

2. Two of the defendants, Farmers Educational and Cooperation Union of America, Iowa Division, and the Iowa Union Farmer Association, are Iowa corporations (S. R. 14).

3. Jurisdiction is invoked under the Lanham Act (S. R. 14).

4. Defendants conceded plaintiff's exclusive right to use its symbol and admitted that they are using the marks "Union Farmer" and "Farmers Union" and asserted that they intend to continue to use said marks unless restrained from so doing (S. R. 14).

5. The use of the marks, "Union Farmer" and "Farmers Union" by defendants is in direct competition with the plaintiff (S. R. 14).

6. Plaintiff, a Texas corporation, has for its purposes to protect the interests of farmers and said purposes are partially educational, fraternal, benevolent and cooperative (S. R. 14, 15).

7. Plaintiff and its State organizations publish various newspapers which use the mark, "Union Farmer" (S. R. 15).

8. Plaintiff's Iowa Division was chartered in 1917, became incorporated in 1924, was an integral part of plaintiff until March, 1954, when its charter was revoked and the legality of such revocation was conceded by defendants (S. R. 15).

9. The corporation, which had been the Iowa Division, changed its name in 1955 to Iowa Farmers Union, which was the name by which it was commonly or colloquially known when it was the Iowa Division (S. R. 15).

10. Defendant Iowa Union Farmer Association publishes a newspaper known as the "Iowa Union Farmer",

whose mark resembles those of plaintiff's state organization papers, being authorized so to do by the Iowa Farmers Union (S. F. 15, 16).

11. Plaintiff's three trade marks were duly registered in the Principal Register of the Patent Office (S. R. 16).

12. Defendants' activities in Iowa have affected plaintiff's interstate activities as well as its Iowa activities. The use by defendants of the marks, "Union Farmer" and "Farmers Union", is in direct competition with plaintiff. The types of service offered and the names used are so similar that there is bound to be confusion; confusion has occurred and will reoccur. Defendants' activities adversely and seriously affect plaintiff's national organization and its nation wide program (S. R. 16).

13. There is no evidence of invalidity of plaintiff's marks (S. R. 16).

14. Defendants' claim of "unclean hands" was not established (S. R. 16, 17).

The six Conclusions of Law were essentially as follows:

1. Plaintiff's three registered trade marks are valid, subsisting and legally registered marks (S. R. 17).

2. The Court has jurisdiction under the Lanham Act (Sections 1114 and 1121, Title 15, U.S. Code) to enjoin the infringement of plaintiff's marks by defendants (S. R. 17).

3. Defendants are infringing plaintiff's registered marks in such a manner that confusion has resulted and will reoccur unless injunctive relief is granted (S. R. 17).

4. Defendants' activities have affected plaintiff's interstate activities as well as its activities in Iowa. The use by the defendants of the marks, "Union Farmer" and

"Farmers Union" is in direct competition with plaintiff (S. R. 17, 18).

5. The defense of "unclean hands" was not established (S. R. 18).

6. Plaintiff is entitled to a permanent injunction, enjoining the defendants, both corporate and individual, from the use of plaintiff's service mark, "Farmers Union", plaintiff's collective mark, "Union Farmer", and the symbol (S. R. 18).

Pursuant to said Findings of Fact and Conclusions of Law, decree was entered permanently enjoining defendants, both corporate and individual, from making any use whatever, directly or indirectly, of plaintiff's collective mark, "Union Farmer", in connection with the printing, publication and distribution of any newspaper or like periodical, and from making any use whatever, either directly or indirectly, of plaintiff's service marks to-wit: the words, "Farmers Union", and the symbol, consisting of a plow, a rake and a hoe surrounded by a circle, in connection with the dissemination of information pertaining to farming and related industries, and particularly information in connection with cooperatives to aid the farmer in marketing his produce, information relating to educational and entertainment programs, for farmers and their families, information as to proposed legislation that directly or indirectly may affect those engaged in farming and related industries, and services to and for the farmer relating to storage of produce, the making of mortgage loans, the brokerage of produce and livestock, the sale of insurance, and the servicing of farm equipment, and from in any way, directly or indirectly attempting to compete with the plaintiff in its use of said trade marks (S. R. 18, 19).

On appeal to the Court of Appeals, Eighth Circuit, the Findings of Fact were sustained (S. R. 42), as were the

Conclusions of Law, and the decree was affirmed (S. R. 49, 53).

In affirming the trial court's findings and conclusions that defendants had infringed plaintiff's registered marks "Union Farmer" and "Farmers Union", the Court of Appeals stated, in part, as follows:

> "The charter of the defendant corporation was granted in 1917, and conferred upon it the right to use the trade marks and name 'Iowa Farmers Union' or 'Farmers Union in Iowa' in soliciting funds and members and identifying itself and its activities as a component division of the plaintiff. It always availed itself of that right and so held itself out. In March of 1954, its charter was legally revoked by plaintiff as was conceded on the trial and all rights under it were withdrawn.
>
> "Notwithstanding the revocation, the individual Iowa defendants and through them, the Iowa organizations have continued to carry on the same activities under the name 'Iowa Farmers Union' or 'Farmers Union in Iowa' and to use the same trade marks as they did before the revocation * * * they admit they are using and will use the plaintiff's registered trade marks, 'Union Farmer' and 'Farmers Union.' They appeal from the decree of injunction rendered against them forbidding them to do so." (S. R. 39).
>
> * * *
>
> "In paragraph five the court found that defendants' use of the marks 'Union Farmer' and 'Farmers Union' was in direct competition with the plaintiff and we think the finding is fully supported by the evidence. From 1917 to 1954 defendant Iowa Farmers Union operated under a charter from plaintiff as an integral part of plaintiff as plaintiff's Iowa division. In March, 1954, the charter was lawfully revoked as conceded and since the revocation the individual defendants have operated the corporations the same as

before, but without contact with plaintiff. Plaintiff is conducting a campaign to reestablish its Iowa division and replace the disfranchised organization and in direct opposition defendants conduct their campaign for members. Defendants continue to publish the Iowa Union Farmer the same as they did when they were members of the Iowa Division of plaintiff. The plaintiff has operated on a national scale for fifty years. It publishes the newspaper National Union Farmer and has State organizations in 18 of the 29 States in which it has members and at least nine of these publish newspapers using plaintiff's mark 'Union Farmer.' Defendants in using the name Iowa Farmers Union not only use plaintiff's registered mark 'Farmers Union', but also use a name that is identical with the name by which plaintiff's State organizations are commonly known as well as the name by which defendant was known when it belonged to and constituted the Iowa Division of the plaintiff. Obviously the plaintiff and defendants are engaged in the same line of endeavor by the same kind of activities in the same field and defendants' use of plaintiff's mark is in direct competition with plaintiff as found by the court." (S. R. 40)

* * *

"When the charter of the plaintiff's Iowa division was cancelled the defendants were no longer authorized to use plaintiff's registered marks, but they have used them and admit they intend to continue. At one of his meetings, defendant Stover stated, 'Membership in the Iowa Farmers Union does not just mean that you belong to the Farmers Union, but that the Farmers Union belongs to you.' He plainly meant his hearers to understand that the name they were using was not the plaintiff's, but belonged to the defendants' organization and that its members belong to the Farmers Union but not to plaintiff. Obviously defendants use the name in direct competition with the plaintiff and infringe in the field of activity for which the marks are registered." (S. R. 44)

* * *

"The plaintiff's marks have acquired a secondary meaning during the many years of their exclusive use by the plaintiff in the field of its operation and defendants' infringement of them in the same field is violative of the Act." (S. R. 48).

* * *

"Our holding in this case that the District Court had jurisdiction of the case under the Lanham Act and Title 28, United States Code, Sec. 1338 (a) and (b), is based upon the fact that the unfair competition engaged in by the defendants as rightly found by the District Court, was substantially related to the proven infringement by defendants of the plaintiff's trademarks, which were duly registered under the Lanham Act." (S. R. 52).

In view of the foregoing pronouncements, it is clear that, in the injunction case, it was adjudicated that defendants were infringing plaintiff's registered marks, "Union Farmer" and "Farmers Union."

On the question of damages to plaintiff from defendants' infringement of its said marks the Court of Appeals stated as follows:

"Defendants' activities in Iowa impede and hinder the reorganization of plaintiff's Iowa division as an integral part of its national organization. The Iowa part is vital and essential as a part of the national organization and defendants' activities there directly and materially affect plaintiff's national operation." (S. R. 42).

And again, the Court of Appeals stated:

"It is material that defendants were formerly associated with plaintiff and are no longer so associated. The former association makes defendants' infringement and misuse of plaintiff's registered marks much more injurious to plaintiff than if the same wrong

were committed by a stranger. The evidence shows clearly that defendants' conduct greatly increases the cost and difficulty plaintiff encounters in its undertaking to reestablish the Iowa division which is essential to its national organization and interstate operation." (S. R. 48).

By reason of the foregoing, it is clear that in the injunction case, it was adjudicated that plaintiff therein suffered substantial damages from defendants' infringement of its registered marks.

At the outset of the trial of this contempt case, counsel for plaintiff asserted that defendant, Fred W. Stover, could not collaterally attack the adjudications in the injunction case and counsel for defendant Stover promptly agreed that such was the case (R. 15).

The defendant, Fred W. Stover, testified that, except for changing the name of the newspaper from "Iowa Union Farmer" to "U. S. Farm Union News", he made no other change in his operations after the injunction was issued from what they were prior to the entry of the injunction decree (R. 53). Maurice O'Reilly testified to the continuance of Mr. Stover's interference with the efforts to reestablish an Iowa Division and that, since the injunction was issued, he has expended for the National Farmers Union in its organization work in Iowa about $37,000 or $38,000 (R. 21 to 30).

In the trial court's Findings of Fact, in the contempt case, are set forth the injunction and the substance of Findings of Fact, made in the injunction case and designated as Nos. 4, 5, 11 and the substance of Conclusions of Law Nos. 3 and 6 (R. 65, 66). The trial court then stated:

"3. Defendant, Fred W. Stover, is the President and principal managing officer of the Iowa Farmers

Union and the Iowa Union Farmer Association. He publishes and is an editorial contributor to the newspaper now known as 'U. S. Farm Union News', formerly known as 'Iowa Union Farmer'. He is in charge of the activities of said Iowa Farmers Union and said Iowa Union Farmer Association, including the solicitation of subscriptions, memberships, dues and contributions and is in charge of the records and headquarters of said corporations. Not only is he bound to comply with the injunction, quoted in Paragraph 1 hereof, supra, but is under the duty to so supervise and direct the affairs of said corporations that they likewise in their activities would obey said injunction.

"4. The continued use of the names, 'Iowa Farmers Union' and 'Iowa Union Farmer Association', by said corporations and in particular by the defendant, Fred W. Stover, has created confusion and misunderstanding in the community and directly violates the injunction. The name, 'U. S. Farm Union News', is so similar to 'Iowa Union Farmer' that it is deceptive and confusing and creates confusion and misunderstanding among the farm people of Iowa.

"5. Except for the change of the name of the newspaper from 'Iowa Union Farmer' to 'U. S. Farm Union News', defendant, Fred W. Stover, as President of defendants Iowa Farmers Union and Iowa Union Farmer Ass'n, has conducted the affairs of both of said corporations since the entry of said decree the same as he did prior thereto. There can be no reasonable doubt or question that defendant, Fred W. Stover, violated the injunction herein. He is guilty of contempt and is subject to penalty therefor." (R. 66, 67).

The Court's Conclusions of Law Nos. 1 to 4 were as follows:

"1. As above stated, Judge Harper found that defendants were infringing plaintiff's registered marks and enjoined them from further infringement thereof. Except for the change in the name of the defendants'

newspaper from 'Iowa Union Farmer' to 'U. S. Farm Union News', defendants, including and under supervision of the defendant, Fred W. Stover, have continued their operations since the entry of the injunction the same as they had prior thereto. There has been no substantial effort to comply with the injunction. Obviously, defendant, Fred W. Stover, continued to do that which he was enjoined from doing. He is guilty of contempt and is subject to penalty.

"2. The name of a newspaper is in the nature of a trade mark. The law of trade names is identical with that of trade marks. Rights that may accrue in a trade name are by reason of the fact that such trade name becomes in law a trade mark. While a trade name is not strictly a trade mark, it is generally governed as to its use by the same rules as a trade mark.

"3. Plaintiff has registered its marks, 'Union Farmer' and 'Farmers Union'. Judge Harper's findings and conclusions adjudicated that defendants' use of the trade name, 'Iowa Farmers Union', infringed plaintiff's registered mark, 'Farmers Union' and that defendants' use of the trade name 'Iowa Union Farmer Association' infringed plaintiff's registered mark 'Union Farmer'. The adjudications thus made are not subject to collateral attack in these proceedings. Defendant, Fred W. Stover, as President of the Iowa Farmers Union, and as president of the Iowa Union Farmer Association, has done nothing whatever to terminate said infringements by said corporations. He is clearly guilty of contempt. In continuing to supervise and direct the activities of said two corporations, defendant, Fred W. Stover, has clearly violated the injunction.

"4. The change of the name of the newspaper from 'Iowa Union Farmer' to 'U. S. Farm Union News' does not avoid infringement of plaintiff's registered marks. The confusion which has existed heretofore is bound to continue and to reoccur because of the similar-

ity of the name to plaintiff's marks particularly when the type of subscribers to defendants' newspaper and to plaintiff's newspapers is considered." (R. 67, 68).

Judgment and decree was entered fining defendant Stover $1,000.00 with provision for reducing said fine to $500.00 if the injunction was promptly complied with (R. 69, 70).

On appeal, the judgment and decree, punishing defendant Stover for contempt of the injunction, was affirmed (Petition for Writ, p. 24).

On the question of violation of the injunction, the Court of Appeals states:

"The findings are fully supported by the evidence and in turn support the court's conclusion that appellant violated the injunction. The slight alterations of the name of the newspaper appellant published, changing 'Farmers' to 'Farm' but retaining 'Union' and adding 'formerly Iowa Union Farmer' were obviously to circumvent the letter of the injunction while adhering to the infringement and unfair competition.

"The argument that appellant may so continue his invasion of the trade mark rights of the plaintiff despite the injunction that was issued against him after full hearing and fair trial is without merit.

"It is true, the injunction prohibits misuse of 'marks' and 'words' and does not say corporate names. But the Lanham Act includes 'names' and 'words' in its definition of trade marks and service marks, 15 U.S.C.A. at 1127, and the injunction in this case was sufficiently phrased and worded to apprise the appellant of the prohibition against his infringement and unauthorized and unfair competition against plaintiff. It is immaterial that the injunction did not include general prohibition of any use of the corporate names of the defendants. It plainly and unambiguously for-

bade the appellant to use the registered words that had acquired secondary meaning to intrude upon and take away the business that belonged to plaintiff. His violations were properly held to be wilful and in contempt of court." (Pet. for Writ, p. 22).

On the question of damages resulting from the violation of the injunction, the Court of Appeals states:

"(2) It was clear to this court on the appeal from the decree of injunction that the wrongful conduct of this appellant and his co-defendants in infringing the plaintiff's marks and engaging in unfair competition against plaintiff, in connection with such infringement, greatly increases the cost and difficulty plaintiff encounters, in its undertaking to re-establish the Iowa division which is essential to its national organization and interstate operation, and on the trial for the contempt, it was shown that after the injunction was issued, the plaintiff spent about thirty-seven or thirty-eight thousand dollars on its organization work in Iowa, in addition to publications, news letters and other materials. Specific instances where appellant's activities interfered with or prevented organization meetings planned by plaintiff were proved. While it is true that the evidence does not afford means to compute mathematically the precise amount of plaintiff's damage, and indeed the amount is not susceptible of such determination, the evidence leaves no doubt that damage far beyond the amount of the fine, that was imposed, was directly caused the plaintiff by appellants' wrongful conduct. Undoubtedly the cost of attorneys' services that was directly caused were of value greater than the fine." (Pet. for Writ, p. 23).

By reason of the foregoing Statement of the Case, it is clear that there is no basis whatever for the issuance of a writ of certiorari herein.

REASONS FOR DENYING THE WRIT.

I.

The adjudications, made in the injunction case, cannot be attacked in this contempt case.

As heretofore pointed out herein under the heading, "Questions Presented", the basic premise for petitioner's Questions Nos. 1, 2 and 5 (1) is the contention that the evidence shows the use of trade names only and no use of trade marks, as such. This contention of petitioner is contrary to the record. As pointed out in the Statement of the Case, *supra*, the trial court, in its Findings of Fact in the injunction case, determined that defendants admitted using plaintiff's marks and asserted that they intended to continue to do so unless restrained (S. R. 14); that the use of said marks is in direct competition with plaintiff (S. R. 14); defendants' use of said marks adversely affected plaintiff's interstate activities as well as its activities in Iowa, confusion has occurred and will reoccur, defendants' activities seriously affect plaintiff's national organization and its nation wide program (S. R. 16). In its Conclusions of Law in the injunction case, the trial court determined that defendants are infringing said registered marks in such a manner that confusion has occurred and will reoccur (S. R. 17); that defendants' activities adversely affect plaintiff's activities in Iowa and have received national publicity, that the use by the defendants of the marks "Union Farmer" and "Farmers Union" is in direct competition with plaintiff (S. R. 17, 18). Said adjudications clearly establish the use of registered marks as well as trade names and were made in the injunction case.

At the outset of the trial of the contempt case, objection was made that adjudications in the injunction case could not be collaterally attacked in the contempt case and counsel for defendant Stover promptly conceded that such was the case (R. 15). In the trial court's conclusion of law No. 3, the Court determined that the adjudications in the injunction case, that defendants' use of the trade name "Iowa Farmers Union" infringed plaintiff's registered mark, "Farmers Union," and that defendants' use of the trade name, "Iowa Union Farmer Association", infringed plaintiff's registered mark, "Union Farmer", were not subject to collateral attack in the contempt proceedings (R. 68). The Court was clearly right in so holding *Maggio v. Zeitz*, 333 U.S. 56, 92 L. Ed. 476, 68 S. Ct. 401; *U. S. v. United Mine Workers of Amer.*, 330 U.S. 256, 91 L. Ed. 884, 67 S. Ct. 677; *Howat v. Kansas*, 258 U.S. 181, 66 L. Ed. 550, 42 S. Ct. 277; *Gompers v. Buck's Stove & R. Co.*, 221 U.S. 418, 55 L. Ed. 797, 31 S. Ct. 492; Annotation 12 A.L.R. 2d 1107; 37 Am. Jur. 517.

By the same token, in petitioner's Questions Nos. 3, 4, and 5-(4), the basis of petitioner's contentions is that there is no proof of damage to the contemnee. But, as above pointed out herein, the trial court determined in the injunction case, that damage had been suffered. Such adjudication is not subject to collateral attack herein.

In petitioner's Question No. 5 (2) (3) he seeks to attack the holdings, by the Court of Appeals in the injunction case (S. R. 52), that jurisdiction was conferred by Section 1338 (a) and (b) of Title 28, U.S. Code, as well as the Lanham Act. Such adjudication, having been made in the injunction case, cannot be attacked herein.

II

The use of the trade name "Iowa Farmers Union" infringes the registered mark, "Farmers Union", and the use of the trade name, "Iowa Union Farmer Association", infringes the registered mark, "Union Farmer".

As pointed out in Subdivision I hereof, *supra*, the trial court determined, in the injunction case, that the use of the trade name, "Iowa Farmers Union", infringed the registered mark, "Farmers Union", and that the use of the trade name, "Iowa Union Farmer Association", infringed the registered mark "Union Farmer." These adjudications are not subject to attack herein. The record is clear that the use of said trade names has continued notwithstanding the injunction. Obviously petitioner Stover is in contempt of the injunction.

Not only is petitioner estopped to attack the foregoing adjudications, but the Court was clearly right in making said adjudications.

It is well established that the use of a corporate name or trade name that constitutes an infringement of a registered trade mark may be enjoined. The following cases are illustrative.

Sunbeam Corp. v. *Sunbeam Furniture Corp.*, 134 Fed. Supp. 614.

National Lead Co. v. *Wolfe*, (C.C.A. 9) 223 F.2d 195.

Laskowitz v. *Marie Designer*, 119 Fed. Supp. 541.

Book of the Month Club, Inc., v. *Children's etc., Book of the Month Club, Inc.*, 112 Fed. Supp. 151.

Robert C. Winn Enterprises v. *Persinger*, (C.C.A. 9) 229 F.2d 154.

Mandee Fabrics, Inc., v. *Slifka*, 97 Fed. Supp. 187.

Lane Bryant, Inc., v. *Glassman*, 95 Fed. Supp. 320.

The test of infringement is whether the natural and probable consequences of the similarity will lead to confusion, and not whether the defendant intended to confuse or whether actual confusion resulted.

Queen Mfg. Co. v. *Ginsberg Bros.*, (C.C.A. 8) 25 F.2d 284.

S. S. Kresge Co. v. *Winget Kickernick Co.*, (C.C.A. 8) 96 F.2d 978.

Esso, Inc., v. *Standard Oil Co.*, (C.C.A. 8) 98 F.2d 1.

Layton Pure Food Co. v. *Church*, (C.C.A. 8) 182 Fed. 24.

United Drug Co. v. *Obear-Nester Glass Co.*, (C.C.A. 8) 111 F.2d 997.

Rice & Hutchins, Inc., v. *Vera Shoe Co., Inc.*, (C.C.A. 2) 290 Fed. 124.

Little Tavern Shops v. *Davis*, (C.C.A. 4) 116 F.2d 903.

Atlas Diesel Engine Corp. v. *Atlas Diesel School*, 60 Fed. Supp. 429.

The registered mark, "Farmers Union", is entitled to protection from the use of the name, "Iowa Farmers Union", and the registered mark, "Union Farmer", is entitled to protection from the use of the name, "Iowa Union Farmer".

General Finance Loan Co. v. *Gen. Loan Co.*, (C.C.A. 8) 163 F.2d 709.

Queen Mfg. Co. v. *Ginsberg Bros.*, (C.C.A. 8) 25 F.2d 284.

Rossmann v. *Garnier*, (C.C.A. 8) 211 Fed. 401, 406.

Little Tavern Shops v. *Davis*, (C.C.A. 4) 116 F.2d 903.

Sterling Brew. v. *Cold Spring Brew. Corp.*, 100 Fed. Supp. 412.

Esquire, Inc., v. *Maira*, 101 Fed. Supp. 398.

Anheuser-Busch, Inc., v. *Power City Brewery*, 28 Fed. Supp. 740.

Household Fin. Corp. v. *Gen. Household Credit Corp.*, 49 Fed. Supp. 541.

Swift & Co. v. *Brenner*, 125 Fed. 826.
Lever Bros. v. *Pasfield*, 88 Fed 484.

On the issue of confusion, it is highly material that defendants were formerly associated with plaintiff, which association is, of itself, evidence of the likelihood of confusion of substantially identical marks.

Stix, Baer & Fuller Co. v. *A. J. Sweet Co.*, (C.C.A. 8) 49 F.2d 598.
Brinkman v. *Laurette Mfg. Co.*, 21 Fed. 607.
Dad's Root Beer Co. v. *Atkin*, 90 Fed. Supp. 477.
Dad's Root Beer Co. v. *Doc's Beverages*, 94 Fed. Supp. 121, aff. 193 F.2d 77.
3 Callman "Unfair Comp. and Trade Mark" 1535, Sec. 82.2(b)(3).

By reason of the foregoing, it is clear that there is no merit whatever to petitioner's Questions Nos. 1, 2 and 5(1).

III.

The evidence conclusively establishes that the infringement of registered marks herein has caused substantial damage.

As above pointed out, the basis for petitioner's Questions Nos. 3, 4, and 5(4) is the erroneous contention that the evidence fails to show actual damages from the infringement of the registered marks. But, as heretofore pointed out, it was adjudicated in the injunction case that damages had resulted and such adjudication is not subject to collateral attack herein. Also, there was abundant evidence of damages resulting from the infringement of the registered marks herein. The damages arise primarily from petitioner Stover impeding, harassing and interfering with the efforts of the National Farmers Union to reestablish its Iowa Division. The situation is concisely summarized by the statement of the Court of Appeals in the

next to the last paragraph of the Statement of the Case, *supra*. Further elaboration would not appear to be necessary at this time.

It is respectfully submitted that there is no merit whatever to petitioner's asserted Questions Nos. 3, 4, and 5(1) herein.

IV.

The Court of Appeals properly invoked jurisdiction under Section 1338 (a) and (b), Title 28, U.S. Code, in the injunction case.

In petitioner's asserted Question No. 5(2) and (3), counsel challenge the holding of the Court of Appeals in the injunction case (S.R. 52) that jurisdiction was conferred in the injunction case by Section 1338(a) and (b), Title 28, U.S. Code, as well as the Lanham Act. This holding was in the injunction case. It is not subject to attack herein. The holding was correct in any event. The plaintiff invoked the jurisdiction of Section 1338, Title 28, U.S. Code, with reference to its claim of unfair competition (S. R. 9). The Court granted relief from unfair competition (S. R. 19). The trial court mentioned the Lanham Act as the basis for jurisdiction (S. R. 14) but did not limit its jurisdiction to the provisions of said act. The Court of Appeals clearly had the right to claim the benefit of both Section 1338, Title 28, U.S. Code, and the Lanham Act. There is no merit whatever in petitioner's asserted Question No. 5(2) and (3).

CONCLUSION.

Upon the record in this cause, we respectfully submit that the petition for writ of certiorari should be denied.

Respectfully submitted,

FREDERIC M. MILLER,
THOMAS B. ROBERTS,
SHERWIN J. MARKMAN,
CHARLES F. BRANNAN,
Attorneys for Respondent.